

MISSOURI  
HOUSE OF REPRESENTATIVES

REPORT TO THE SPEAKER ON:

**CHILD CUSTODY, VISITATION,  
CHILD SUPPORT ENFORCEMENT,  
AND DIVORCE MEDIATION**

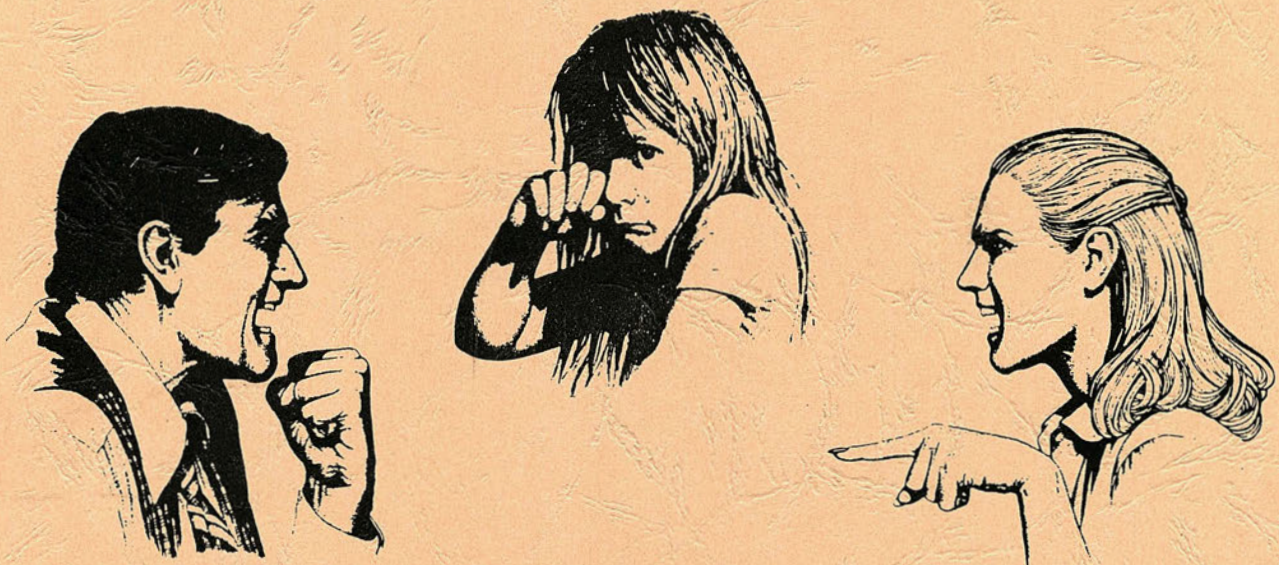
**1987**

DOCUMENTS DIVISION

NOV 02 2001

MISSOURI STATE LIBRARY

By the Interim Committee on  
**CHILDREN, YOUTH AND FAMILIES**  
KAYE H. STEINMETZ, Chair





## TABLE OF CONTENTS

Letter of Appointment from the Speaker of the House.....	Page 1
Letter from the Chairman, Representative Kaye H. Steinmetz.....	Page 3
Transmittal Letter.....	Page 4
Executive Summary.....	Page 5
Recommendations.....	Page 7
Part I--Child Custody.....	Page 10
Part II--Visitation.....	Page 22
Part III--Child Support Enforcement.....	Page 34
Part IV--Divorce Mediation.....	Page 39
Bibliography.....	Page 43

### Appendices

Charts, graphs and informational data.....	Page A1
Draft of Proposed Legislation.....	Page B1

OFFICE OF THE SPEAKER



BOB F. GRIFFIN  
314-751-2700

STATE CAPITOL  
JEFFERSON CITY, MISSOURI

MISSOURI  
HOUSE OF REPRESENTATIVES



September 15, 1987

Representative Kaye Steinmetz  
13 Longhenrich  
Florissant, Missouri

Dear Kaye:

Please be advised that as of this date I am appointing an Interim Committee to study child custody, visitation and child support enforcement and divorce mediation. The following Representatives will serve on this Interim Committee: Kaye Steinmetz, Chairman, Doug Harpool, Sandra Reeves and Marion Cairns.

I expect most of the Committee's work will be done in Jefferson City however, should the Committee's work entail the Committee traveling out-of-state or out-state, please submit an agenda for approval to my office before any traveling occurs. Please submit the Committee's findings and recommendations along with any proposals for legislation the Committee may plan to introduce in 1988 to my office prior to December 1, 1987.

I would also like a member attendance record for each of the meetings your Interim Committee will hold this year.

If you have any questions, please feel free to contact Mark or myself at any time.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bob F. Griffin".

BOB F. GRIFFIN  
SPEAKER

BFG:sm

cc: Committee Members  
Gene Rose  
Darrell Jackson  
Doug Burnett  
Steve Bauer  
Thelma Werner

OFFICE OF THE SPEAKER



BOB F. GRIFFIN

314-751-2700

STATE CAPITOL  
JEFFERSON CITY, MISSOURI

MISSOURI  
HOUSE OF REPRESENTATIVES



September 22, 1987

Representative Kaye Steinmetz  
13 Longhenrich  
Florissant, Missouri

Dear Kaye:

Please be advised that as of this date I am appointing Representative Sue Shear as a member to the House Interim Committee which you chair.

You also have my permission to hold five hearings across the State. If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature of Bob F. Griffin in black ink.

BOB F. GRIFFIN  
SPEAKER

BFG:sm

cc: Representative Sue Shear  
Doug Burnett  
Darrell Jackson  
Thelma Werner  
Steve Bauer  
Gene Rose



**KAYE H. STEINMETZ**  
MISSOURI HOUSE OF  
REPRESENTATIVES DISTRICT 74

CHAIR—CHILDREN,  
YOUTH & FAMILIES

APPROPRIATIONS FOR  
SOCIAL SERVICES &  
CORRECTIONS

ELEMENTARY &  
SECONDARY  
EDUCATION

PUBLIC EMPLOYEE  
RETIREMENT  
(Joint Statutory)

CHAIR—MISSOURI  
CHILDREN'S SERVICES  
COMMISSION

December 30, 1987

The Honorable Bob Griffin  
State Capitol, Room 308  
Jefferson City, Missouri 65101

Dear Mr. Speaker,

Divorce is painful. Your Select Interim Committee on Children, Youth, and Families learned that it causes many emotions—including confusion, disappointment, anger and revenge—and that everyone is hurt by the legal process, and most especially the children.

At your request, the Committee did a careful and thorough study on child custody, visitation, child support enforcement, and mediation. We submit the following findings and recommendations, and respectfully remind you that we always tried to keep the best interests of children foremost in our deliberation.

Five public hearings across the state dramatically demonstrated the problems. We heard from psychologists, law professors, shelter directors, and professional mediators; as well as mothers, fathers, grandparents, and step-parents who have been directly affected by "the system". Witnesses shared their problems and recommendations.

The work of the Committee has been condensed into three major legislative proposals. They are included within this report. I hasten to point out, however, that passage of these three bills will not eliminate all of the problems. We also make long-range recommendations that will require a more thorough study and the necessary appropriations, and hope that they will receive serious consideration in the near future.


This report includes only carefully selected materials and testimonies. Sharon Busch of House Research and Barbara Mertens, my secretary, are largely responsible for its preparation, and I'm grateful for their dedication and hard work throughout the study.

I'm grateful, too, for the participation and assistance of Michael Henry, Director of the Division of Child Support Enforcement (or his designee), and Donna Checkett, Legislative Coordinator for the Department of Social Services.

I also appreciate the work of Committee members. They continue to demonstrate their commitment and concern.

Thank you for the opportunity to serve Missouri's children and youth!

Sincerely,

  
KAYE H. STEINMETZ, CHAIR  
Children, Youth, and Families Committee



## YOUTH AND FAMILIES COMMITTEE

Room 400CC  
State Capitol  
Jefferson City, MO 65101

Rep. Kaye H. Steinmetz  
Chairman  
Rep. Doug Harpool  
Vice-Chairman  
Barbara Mertens  
Secretary  
Sharon Busch  
Legislative Assistant

Rep. Stephen C. Banton  
Rep. Marion Cairns  
Rep. Patrick Dougherty  
Rep. Harry Hill

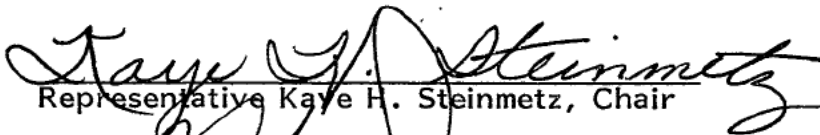
Rep. Mary Kasten  
Rep. Gene Lang  
Rep. Sandra Reeves  
Rep. Sue Shear

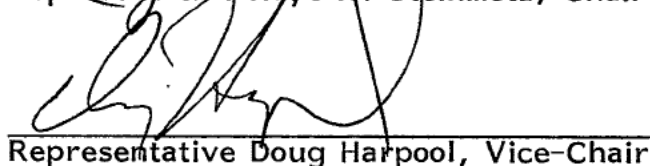
December 1987

The Honorable Bob Griffin  
State Capitol, Room 308  
Jefferson City, Missouri 65101

Dear Mr. Speaker,

The undersigned members of your Interim Committee on Children, Youth and Families have completed the study on "Child Custody, Visitation, Child Support Enforcement, and Divorce Mediation" and submit the attached report.

  
Representative Kaye H. Steinmetz, Chair

  
Representative Doug Harpool, Vice-Chair

  
Representative Marion Cairns

  
Representative Sandra Reeves

  
Representative S. Sue Shear



MISSOURI HOUSE OF REPRESENTATIVES

## **EXECUTIVE SUMMARY**

**"Hi! My name is Danny. I am writing you this letter to tell how I feel being 13 years old and about my father not paying his child support and how it has effected (sic) me. I've gone to school with holes in my shoes when I'd (sic) rather not have, but we didn't have the money. His child support could have bought new shoes for me instead of my mother beating her brains out at work trying to get the money."**

(Letter from Danny B., 10-28-87)

**"After I was divorced, I was working two jobs to make sure that my children were fed and cared for. If it hadn't been for my mother at night and during the evening keeping these children, I would have been up the creek without a paddle. I received \$15 per child which amounts to \$90 every two weeks. I'm still receiving that after 11 years. The complaint is not that he is not giving anything, but these children are not 15, 14, and 12 in 1980. My son set down and figured out \$15 a week will not buy him bus fare and lunch for the week."**

(Testimony from Geraldine M., 10-29-87)

**"Payments have always been on time or early and have been paid in full. The same cannot be said with respect to my being awarded reasonable rights of visitation. Visitation was granted sporadically from the time of my daughter's birth until June, 1986, during which time her mother dictated all details and terms of visitation. Since June, 1986, I have seen my daughter for a total of 3½ hours, this being the result of legal intervention. I am currently involved in litigation, initiated by her, requesting increased child support."**

(Testimony from Robert T., 10-29-87)

**"My husband wants custody of the children. He hasn't even exercised his visitation three-fourths of the time since May. I mean he specifically took me to court, wanted visitation of the children on Father's Day. He donated his time to something for four days. He didn't even call his children; they didn't get to give him their Father's Day present. He still hasn't gotten the card. He had visitation of my son on this birthday—his thirteenth birthday. It turned into a most horrendous thing. He decided not to take him out and promised to take him to dinner and a show. And when I came back from taking my kids from a swimming meet, they said Dad's not coming over tonight. My son was in tears. He was very emotionally distraught because his father decided not to go out with him. He is supposed to have visitation of the kids on these special occasions, and then he doesn't even, you know—he goes off to conventions and doesn't even take into consideration their emotional needs."**

(Testimony from Carolyn S., 10-28-87)

**"My son, Stephen, age 21, died August 20, 1973, leaving a young widow and an 18 month old son. My daughter-in-law lived in Wichita, Kansas, with her folks and kept in touch with me for a few months. Then I heard no more for ten years. My attempts to get in touch with her and later try to find her failed. Then, in late 1983, her parents got in touch with my older son. They had custody of Stephen's son and had been raising him for about the last 8 years. They made a trip down, and I was able to become acquainted with my grandson. Now I have the chance to be in touch with him often."**

(Testimony from Colleen S., 11-10-87)



These problems -- and more -- were the focus of attention as the Interim Committee of the Children, Youth, and Families studied the subject areas of child custody, visitation, child support enforcement, and divorce mediation. Although the four areas will be addressed separately in the interim report, the committee was cognizant of their interrelationship when they fashioned legislation addressing these areas.

Testimony was heard in Jefferson City, Cape Girardeau, St. Louis, Columbia, Springfield, and Kansas City. Approximately 110 Missouri citizens testified personally and many others submitted written testimony.

Whether the legislature should change joint custody from an "option" for parties to a legislated "preference" was the focus on the issue of custody. The proponents of the preference and the proponents of the option believed the change would result in more joint custody awards, but disagreed whether this result would be beneficial to the child. The proponents of the preference argued that more contact would encourage parents to share the decision-making rights and responsibilities of child rearing and would result in the child's continued relationship with both parents. The proponents of the option argued that this was unrealistic for some families, and that it would likely result in inappropriate awards which could have harmful effects on the child, particularly on families of domestic violence where more contact and control would increase the risk of violence.

Visitation was the area in which fathers felt their rights were most aggrieved. They complained not only about the lack of cooperation from the custodial parent, but about the lack of enforcement from the courts. They resented the inequity of a system which enforces child support rights, but not visitation rights. Grandparents petitioned the committee to expand their visitation rights beyond the present statute. Protective parents, on the other hand, wanted more restrictions on visitation rights of formally abusive parents.

Inadequate child support remained a major problem for custodial parents. In spite of state involvement in the enforcement of orders, many awards were too low initially to adequately meet the needs of a child, even if they were enforced. The self-employed continued to avoid enforcement of their awards. An additional factor which contributed to the inadequacy of child support was the difficulty of modifying an award as a child's needs increased with age. Another concern for custodial parents was a lack of proper medical support and the enforcement of such support orders.

Divorce mediation was viewed as a positive dispute alternative to the present adversarial system. The need for such services was undisputed; however, the overwhelming problem was how to fund these services for every judicial circuit.

The testimony revealed the painful consequences of divorce on families. No person, male or female, adult or child, appeared to escape unscathed. The consequences of animosity, poverty and emotional upheaval seemed to have long-range rather than temporary affects.

## RECOMMENDATIONS

### CUSTODY

This Committee recommends the following:

PASSAGE OF LEGISLATION SPONSORED BY THE MISSOURI BAR ASSOCIATION'S FAMILY LAW SECTION IN REGARD TO CUSTODY, SUPPORT, MAINTENANCE, AND PROPERTY DIVISION, WITH THE ADDITION OF FAMILY VIOLENCE AS A FACTOR FOR CONSIDERATION IN AWARDING CUSTODY OF THE CHILD(REN). SPECIFICALLY, A PREFERENCE FOR JOINT CUSTODY; A PROVISION FOR ASSIGNING A MEDIATOR IN CONTESTED CUSTODY CASES; AND NEW CONSIDERATIONS IN REGARD TO MAINTENANCE AND DIVISION OF PROPERTY.

A GUARDIAN AD LITEM BE APPOINTED IN ALL CONTESTED CUSTODY CASES AND IN ANY DISSOLUTION, CUSTODY, OR MODIFICATION ACTION ALLEGING CHILD ABUSE OR NEGLECT, IN ORDER TO PROTECT THE BEST INTERESTS OF THE CHILD.

PARENTAL KIDNAPPING BE DESIGNATED AS A CRIME (SPECIFICALLY A CLASS D FELONY), AND THAT THE REGISTRAR OF VITAL STATISTICS AND ELEMENTARY AND SECONDARY SCHOOLS BE REQUIRED TO TAG A CHILD'S RECORDS AND THEN NOTIFY THE MISSOURI HIGHWAY PATROL OF ANY REQUESTS FOR COPIES OF THESE RECORDS, TO THEREBY FACILITATE THE LOCATION OF A MISSING CHILD.

### VISITATION

The Committee recommends the following:

THE COURTS ENFORCE VISITATION RIGHTS AS VIGOROUSLY AS SUPPORT RIGHTS.

THE COURTS CONSIDER A SECOND FINDING OF NONCOMPLIANCE AS GROUNDS FOR A CHANGE OF CUSTODY TO THE NONCUSTODIAL PARENT.

ANY GRANDPARENT, WHO HAS BEEN DENIED VISITATION FOR A PERIOD OF AT LEAST SIX MONTHS, BE GIVEN STANDING TO PETITION THE COURT FOR VISITATION RIGHTS.

PROOF OF TREATMENT OR REHABILITATION BE REQUIRED BY THE COURT BEFORE ANY UNSUPERVISED VISITATION IS GRANTED TO A FORMERLY ABUSIVE PARENT.

## CHILD SUPPORT

The Committee recommends the following:

INCREASE THE STAFF OF THE DIVISION OF CHILD SUPPORT ENFORCEMENT AS WELL AS THE STAFF OF THE CIRCUIT CLERKS.

JUDICIAL UTILIZATION OF THE GUIDELINES FOR CHILD SUPPORT AS RECENTLY DEVELOPED BY A SPECIAL COMMISSION AND ADOPTED BY THE DEPARTMENT OF SOCIAL SERVICES AND THE MISSOURI BAR, BELIEVING THAT ADEQUATE AWARDS CAN HELP ELIMINATE AN IMPOVERISHED EXISTENCE FOR MANY OF MISSOURI'S CHILDREN.

THE SUPREME COURT ADOPT BY COURT RULE, AS A REBUTTABLE PRESUMPTION, GUIDELINES FOR THE ESTABLISHMENT OF ALL CHILD SUPPORT OBLIGATIONS, INCLUDING JOINT CUSTODY AND SPLIT CUSTODY ARRANGEMENTS.

PROSECUTING ATTORNEYS MAKE CHILD SUPPORT A HIGHER PRIORITY FOR ENFORCEMENT AND THE DIVISION OF CHILD SUPPORT ENFORCEMENT BE GIVEN AUTHORITY TO WITHHOLD FEDERAL INCENTIVE MONEY FROM COUNTIES WHICH ARE NOT PURSUING THE ENFORCEMENT OF SUPPORT RIGHTS.

IMMEDIATE WAGE WITHHOLDING FOR ALL FUTURE CHILD SUPPORT PAYMENTS AND MODIFICATIONS.

ESTABLISHMENT OF A CENTRALIZED DATA SYSTEM IN ORDER TO MORE ACCURATELY COORDINATE THE INFORMATION OF CIRCUIT CLERKS WITH THE DIVISION OF CHILD SUPPORT ENFORCEMENT.

WHEN POSSIBLE, MEDICAL SUPPORT FOR CHILDREN BE INCLUDED IN EVERY SUPPORT ORDER, THROUGH COMPANY INSURANCE PROGRAMS OR PRIVATE COVERAGE.

THE STANDARD FOR MODIFYING AN AWARD OF SUPPORT BE CHANGED FROM "SO SUBSTANTIAL AND CONTINUING AS TO MAKE THE TERMS UNREASONABLE" TO THE "BEST INTEREST OF THE CHILD" STANDARD.

THE CRIME OF "CRIMINAL NON-SUPPORT" BE CHANGED FROM A MISDEMEANOR TO A CLASS D FELONY.

THE DEPARTMENT OF REVENUE BE AUTHORIZED TO SUSPEND OR REVOKE THE DRIVER'S LICENSE OF ANY OBLIGOR WITH AN OUTSTANDING STATE DEBT OF \$1,000 OR MORE, INCLUDING A CHILD SUPPORT ARREARAGE. HARDSHIP PRIVILEGES FOR DRIVING TO AND FROM WORK MAY BE GRANTED BY THE COURT.

ESTABLISHMENT OF A PATERNITY REGISTRY FOR PUTATIVE FATHERS TO ENSURE NOTIFICATION IN THE EVENT OF ADOPTION ACTIONS.



## DIVORCE MEDIATION

The Committee recommends the following:

THE MISSOURI BAR AND THE JUDICIARY TO PROPOSE MEDIATION STANDARDS, QUALIFICATIONS, AND ADMINISTRATIVE RECOMMENDATIONS IN ORDER TO AFFORD CITIZENS THE BENEFITS OF SUCH SERVICES.

THE DEVELOPMENT OF AN AWARENESS PROGRAM TO EDUCATE LAYMEN OF THEIR LEGAL RIGHTS REGARDING DISSOLUTION AND CUSTODY, IN ORDER TO AVOID LIFE TIME EFFECTS OF A DECISION MADE IN IGNORANCE AND HASTE, JUST TO ALLEVIATE THE COST AND THE EMOTIONAL TRAUMA OF THE MOMENT.

THE DEVELOPMENT OF A FAMILY COURT SYSTEM DESIGNED TO FACILITATE DOMESTIC RELATIONS PROBLEMS WITH JUDGES AND PERSONNEL TRAINED IN THE SOCIAL AS WELL AS THE LEGAL PROFESSIONS.



## PART 1

### CHILD CUSTODY

Custody was the most controversial issue of the four subjects of the interim. The arguments were not strictly for or against joint custody, but were focused around the Missouri Bar's sponsored legislation setting forth a preference for joint custody. The Bar's proposal eliminates the present distinctions between joint "legal" custody and joint "physical" custody and combines them within a single category of "joint custody". The proposed change from joint custody as an option to joint custody as a preference was the issue which generated the most criticism and opposition. The grounds on which both sides could agree was that joint custody was not appropriate for everyone. The effects of a legislated preference became the hotly contested issue.

Proponents of the preference argued that a preference would help eliminate judicial preference for women in custody battles and result in more joint custody awards, which would in turn, be beneficial to the child's continuing relationship with both parents. One psychologist testified that in his experiences, joint custody is the least detrimental alternative for children of divorce. Another psychologist emphasized the need for an individualized plan that would not necessarily mean a 50-50 physical split, but would mean equal decision-making rights and responsibilities of child rearing.

Proponents of the option agreed that a preference would likely result in more joint custody awards, but disagreed on the beneficial affects on the child. Some child development experts testified that a 50-50 joint physical custody arrangement increases a child's feeling of instability, and such a split was more likely to occur under a preference statute.

Experts working in the field of domestic violence argued that joint custody awards for these families would not only be inappropriate, but would actually put women and children at-risk because of the increased contact between them and their abuser. They argued that a judge is prevented from even hearing about the abuse due to several factors which include:

- 1) the duress of cost to settle rather than litigate the case;
- 2) fear of reprisal by the abuser;
- 3) dynamics of abuse such as "secrecy" which prevents the abused from testifying because of the shame and may have contributed to falsifying records regarding past injuries

They further argued that domestic violence is not a unique situation, as commonly believed. They cited an F.B.I. report stating that one out of three women in the United States face violence or threat of violence by their intimate partner; that every 15 seconds there is a beating in this country; and that four women die in their own home everyday from abuse.<sup>1</sup> Testimony pointed to the high correlation between spouse abuse and child abuse, citing an ABA study that found the rate of child abuse to be 129 percent higher in families with spouse abuse.<sup>2</sup>

Evidence is growing that witnessing violence against others may have an even stronger effect on children than being targets of abuse, particularly when they are boys.<sup>3</sup> Men and women who saw their parents physically attack each other were three times more likely to hit their own spouses than were those with non-violent parents. The sons of the most violent parents have a rate of wife-beating ten times greater than that of the sons of non-violent parents.<sup>4</sup>



The proponents of the option maintain the status-quo is the superior way to ensure appropriate joint custody awards because a preference assumes equality of power and parental fitness, and in reality, neither can be assumed in today's society. The proponents of joint custody, on the other hand, maintain that sole custody causes problems and perpetuates animosity and that a preference for joint custody has the best chance of changing parental expectations going into a divorce and thereby, hopefully, mitigating the polarization over custody issues before it gets started.

SELECTED SAMPLE TESTIMONY  
ON  
CHILD CUSTODY

PRO-PREFERENCE, JOINT CUSTODY

"Children have a right to co-parenting after their mother and father divorce. However, the system encourages the loss of one parent. He or she, is replaced by an occasional visitor and if allowed by the custodial parent, he or she is just an occasional visitor in the child's life."

"I am angry and I am frustrated. I'm concerned about the health and welfare of my children and their future well-being. They have the right not to be denied their father and their grandparents. They system condones not only diminishing the role of the parent but the elimination as well."

--Tom Neumeyer  
Children's Rights Coalition  
1418 Mary Ann  
Cape Girardeau, Mo. 63701

"...To me joint custody just simply makes sense."

"I don't see that the adjustment in that area is any more difficult than a child, all of a sudden, having to adjust to either mom or dad basically not being around at all."

--Gretchen Fee  
In the Child's Best Interest, A Better Way, and The  
National Council for Children's Rights  
609 Sycamore, Apartment 2  
Cape Girardeau, Mo. 63701

"One reason we need the preference is because judges are still interpreting the law as an 'agreement' bill and we need something stronger. How many years do we have to crawl before we can walk? Boys need a role model and not a 'cop-out' father."

--Ted Westrich  
1548 Amblerwood  
Cape Girardeau, Mo. 63701

"I found joint custody to be a very expensive option and feel I should not have to pay child support, because I have the children 50% of the time ."

--Rodger Amelunke  
Route 2  
Jackson, Mo. 63755

(Was awarded joint custody over wife's objection and is sharing joint physical custody successfully without following the decree in detail.)

"The preference would equalize the position of the parents...so that if there is the expectation in the law that people will work out a plan (that is a preference), they're much more likely to do it."

"When you grant all decision making to one parent, and usually the mother, you are essentially telling the child the other parent's input doesn't count. What we find is that if you want respect for laws, for regulations, for social expectations, those tend to be carried by the father, the men in our society."

--Dr. Joanne B. Gilden  
Clinical Psychologist  
11 South Meramec, Suite 1107  
Clayton, Mo. 63105

"Joint custody encourages fathers to maintain close contact with their children, including more regular child support payments and less litigation over payments after the divorce settlement."

"Parents do not have to get along well in order for joint custody to work."

"Joint custody is not preferable if one of the parents is abusive or conflict ensnares children."

--Kenneth F. Johnson  
Fathers Demanding Equal Justice for Children, Second Wives  
and Grandparents of Kansas and Missouri  
P. O. Box 398  
Columbia, Mo. 65205

"Indeed, I have come to favor a rebuttable presumption of joint custody, not because it is a panacea, but because it seems to have the best chance of changing parental expectations going into a divorce and thereby, hopefully, mitigating the polarization over custody issues before it gets started; a 'head'em off at the pass' approach."

--Gerald H. Vandenberg, Ph.D.  
Clinical Psychologist  
Suite 270, Leawood Executive Centre I  
4601 College Boulevard  
Leawood, Ks. 66211

"...and it is my belief that the present law probably doesn't really make joint custody a viable option."

"But I think under the new law the courts are certainly going to be encouraged a great deal to look at joint custody as a truly viable option."

"When you have sole custody, you have given all of the power to one person. The whole problem with sole custody is



that the non-custodial parent, on too many issues, hears the statement, I have custody, you can shove it."

"...it's not going to work for everybody. The Missouri Legislature, the United States Congress, all the judicial and legislative branches are not going to make good parents out of bad parents. It's just not going to happen."

--Jack Cochran, J.D.

Past Chairman of the Family Law Section  
of the Missouri Bar Association  
Route 2, Box 133  
Blue Springs, Mo. 64015

"It's the legislature's job to state the policy of our state and to set up mechanisms for that policy to be carried out. Then it's the court's job and the lawyer's job to make sure that things are done in accordance with the law. I think that the legislature needs to express the expectation that both parents will stay involved in the children's lives, and I don't want to get caught up at this point in the semantics because I know you've talked about this a lot. Do we need to use the word preference? Do we need to use the word presumption? Can we say these things in different ways and accomplish the same thing?"

"The joint legal custody statute says 'unless otherwise allocated by the court' the parties are ordered to confer on issues of health, education and welfare. That's a direct invitation. That's saying if you think that these parents are not going to be able to work together and agree on all of the issues, give somebody a final say. So I very oftentimes will say that the parents will confer with one another in an attempt to agree, but if they're unable to agree after mediation, and I put mediation in my agreements, then father's say is final on education, mother's say is final on health and if what we're looking for is a tie breaker that does it."

--Lisa Kircher, J.D.

Newburger and Vossmeier  
393 North Euclid, Suite 300  
P. O. Box 8140  
St. Louis, Mo. 63156

"There is a definite problem in this country and; especially in Missouri, in the areas of child support, temporary custody, child custody, and divorce mediation. These problems are compounded by many outside influences, including; but not limited to; the media, the judiciary, the legal profession, law enforcement, and the lawmakers themselves. This is by no means meant to include all of the above mentioned persons."

--Richard L. Rogers

Parents Demanding Equal Justice  
(for Children, Step-Parents, and Grandparents)  
P. O. Box 1595  
Florissant, Mo. 63032-1595

"I was privileged to serve as a member of the Missouri Bar Family Law Section Child Custody Study Committee comprised of family law specialists from throughout the state, two judges, and the professor of family law at the University of Missouri--Columbia. During the past year this committee conducted extensive public hearings throughout Missouri and participated in additional comprehensive study and discussion in the following areas: child custody, child support, maintenance and division of property. The unanimous findings of the committee, which subsequently were endorsed by the Family Law Section and the Board of Governors of the Missouri Bar, were that statutory changes were required in these four areas to better assure greater equity, fairness and reason to all parties involved in dissolution of marriage."

"In the area of child custody, the committee unanimously concluded that Missouri should adopt a preference in favor of joint custody. This proposed statutory change would cause Missouri judges to consider joint custody as the preferred alternative custody arrangement; consistent with the declaration that 'It is the public policy of this state to assure minor children frequent and a meaningful contact with both parents, after the parents have separated or dissolved their marriage, and that it is in the public interest to encourage parents to share the decision-making rights and responsibilities of child rearing, in order to effectuate this policy.'"

"The vast majority of the testimony and data presented to the committee by parents, mental health professionals and attorneys, as well as the committee's independent study and discussion, strongly supported the concept of preferential joint custody and was consistent with the growing trend in child custody laws in the United States."

--Barton Blond, J.D.

1050 Home Savings Building  
1006 Grand  
Kansas City, Mo. 64106

#### PRO-OPTION, JOINT CUSTODY

"Therefore joint custody would be inappropriate where partners are involved in battering relationships."

"Violent behavior or the threat of violent behavior by the abusive partner makes contact dangerous and joint decision making impossible."

"Conversely, joint custody would increase the amount of contact between partners thereby escalating the threat of violence."

"Prolonged exposure to the violent parent or situation through joint custody or excessive visitation may increase

or sustain the damage (to the child)."

--Michele Marshall Handley

Children's Program Coordinator  
St. Martha's Hall  
P. O. Box 4950  
St. Louis, Mo. 63108

"When discussing child custody, it is important to realize that children whose parents are in abusive relationships are victimized by the abuse even if they are not directly abused. A research study in a shelter reported in 1986 that 90% of the children had witnessed the abuse. As a result of witnessing or experiencing the abuse, 75% of the children in the study were exhibiting signs of aggression; 55% exhibited signs of withdrawal; and 10% showed symptoms of suicidal thoughts."

"Estimates are that children exposed to violence have a 65% chance of becoming abusers or victims of violence in their adult relationship."

--Charlotte Carnine  
Child Programming Coordinator  
Northland Battered Persons Program  
P. O. Box 11055  
Kansas City, Mo. 64119

"He had told me he would take my child and leave if I didn't do what he wanted."

"He also stated it was okay for a father to have sexual feelings towards his daughter."

"...there were times I was so mentally distraught that I wished my husband would go ahead and kill me."

"...I have been harassed and accused of trying to hurt my ex-husband, when all I've been trying to do is keep my child safe."

--Leisa Y  
(Victim of spousal abuse)

"It is all too clear in my work that violence in the family is still a huge problem in the United States. Fully half of American men at some point use physical violence to get control of the woman with whom they are in a relationship. The FBI informs us that as much as 20% of men use violence regularly, as much as once a month or more. Studies consistently find that women are the victims, not the perpetrators of this physical violence. Men perpetrate 96% of the time when such physical violence occurs; women 4%. Any attempt to overlook this huge social problem by legislating 'equality' in divorce settlements is amazingly naive, since we will be socially reproducing the generational repetition of the 'domestic' violence."

"All custody decisions must take into consideration the past sure of violence in the household, and who was the true nurturer and caretaker of the children. Only in this way can the best interests of our children be served."

--Don Conway-Long

Co-founder of RAVEN  
(A counseling collective for men who use violence in their  
personal relationships.)  
P. O. Box 24159  
St. Louis, Mo. 63130

"We know that the children learn by modeling, and I don't think anyone is going to dispute that, and what they learn, too, is that the court also views such behavior as being acceptable, because after all, if the court thought the father was doing something wrong, wouldn't they have protected the children from him? When he gets custody, we've not done that."

"Studies may show that children are doing wonderful. It may not be because there was mediation and joint custody, but that those parents cared about those kids and did from the beginning, and in their divorce, worked out settlements that were in the best interest of the children because they both wanted to, and both loved them...We are going to have those people who have not gone in with the desire to do what's best for their kids. The bickering and fighting will still go on."

--Nelya H. Warner

ALIVE (Alternatives to Living in Violent Environments)  
P. O. Box 11201  
St. Louis, Mo. 63105

"It is maintained, at this point by our members, that a 'Preference for Joint Custody' will not be of benefit to the children of the state of Missouri."

"The choice should remain with the parents and not be a legislated requirement. Cooperation and good communication cannot be legislated satisfactorily."

"By implementing a 'Preference for Joint Custody', we believe child support awards will be even lower than those that are now granted to custodial parents and will impose an even greater hardship of support on the parent who may have the lowest income."

--Tracy L. Bergman, President

I Owe You

116 East Atchison, Apartment A  
Jefferson City, Mo. 65101

"The joint custody provisions of the statutes which allow a court to award joint custody have become in all practicality more a bargaining tool for settling custody disputes than they have a tool to assist the children..As a practical matter, when lawyers begin to fight over custody on behalf of their client who is going to get primary custody, it has become a convenient way to avoid the fight."

"If the people get along you don't need that provision. If they don't get along, the provision is unenforceable anyway."

"The request for joint custody, I think, came up because there were so many instances where the non-custodial spouse was not given proper input into the situation with his children."

--Richard Edwards, J.D.

Past Chairman of the Family Law Committee of the  
Metropolitan Bar Association of St. Louis  
7733 Forsyth Boulevard, Suite 1000  
Clayton, Mo. 63105

"A preference for joint custody may pit couples against each other by having to prove the other unfit in order to get custody."

"One thing we do know is that the worst effect on children is when they live in a household where the parents are fighting. I think probably second worse, maybe even worse than that, would be a relationship where the parents are still involved and are still fighting and that child is still involved in the battles...we can't legislate how the parent's relationship is to each other and if it's ugly and awful, the kid is going to suffer and probably that child is going to suffer more than if they had less contact with the father or if the father's contact is only with the child and much less with the mother."

--Marilyn Coleman, Ph.D.

Department Chairman of Child and Family Development  
University of Missouri  
28 Stanley Hall  
Columbia, Mo. 65211

"Frankly, I don't see that making the preference would serve any of my clients, and I don't believe that it would serve the interest of the children. And frankly my greatest concern here is who's speaking for the children?"

"I think that the law as it stands now--where there is an option--is what it should be."

--Lynn Malley, J.D.

Mid-Missouri Legal Services  
Member of the Missouri Bar Family Bar Committee  
P. O. Box 1006  
Jefferson City, Mo. 65102

"My lawyer told me, 'Well, you can either pay me \$600 to \$700 now or you can take it to court and pay me \$3,000 to \$4,000 that you don't have. So it's up to you.'...I mean I was in a bad, bad way but you are so scared to do anything...and I wouldn't talk about it because I was too scared...My lawyer, when I finally talked to her about it, said, 'Well, the judge hears this all the time, you know, and his attitude is well, this is the fourth case I've heard today about the abuse.' I really don't care."

--Roxanne Barger

1440 South Avenue



OTHER RELATED TOPICS

JOINT 'PHYSICAL' CUSTODY

"I strongly oppose, for young children, the joint custody arrangements which involve the child's moving from mother's house to father's house semi-weekly, bi-weekly, etc. The young children with whom I have worked who are subjected to this procedure have intense and constant adjustment and re-adjustment problems. They have no home (my house), but they are eternally visitors in the homes of others. They lack a sense of permanence, a sense of home, an idea of where they belong. All of these detachments from home have a significant negative impact on the self-image of the child. The child without a positive self-image is a child headed for trouble. I ask you, whose needs are being met by these sorts of arrangements? Certainly not the needs of the child."

--Mary-Angela B. Johnson, Director  
Montessori School  
915 Maryland Avenue  
Columbia, Mo. 65201

"I have been working with children for over 20 years--lots and lots of children. When I think of joint custody, I have seen where, in fact, it can work and I have seen where it has been very detrimental to children--especially when the idea of 'joint' means equal time."

"I think it would be very important for judges to see that joint custody can mean things other than an exact number of equal minutes per week."

--Kathy Thornburg, Ph.D.  
Child Development  
University of Missouri  
32 Stanley Hall  
Columbia, Mo. 65211

"Splitting children up is 'criminal'."

--Larry Hamilton, Faculty  
Southeast Missouri State University  
Cape Girardeau, Mo. 63701

"There are people who would speak in favor of 50-50 sharing of time. I have seen a negligible number of cases where there has been a 50-50 sharing of time that has been successful. I personally have an awfully lot of trouble with that particular concept, unless we're dealing with an ideal situation, and ideal ages of the children, and that is a pretty unique situation."

--Jack Cochran, J.D.

Past Chairman of the Family Law Section of the Missouri  
Bar Association  
Route 2, Box 133  
Blue Springs, Mo. 64015

"When you take children, and you split up their custody, six months here and six months there, you are breeding instability. That is what you're doing. These children who have been ripped up as it is, because of a divorce are now told they're going to live with one group of friends for one period of time, another group of friends for another period of time and constantly be brought back and forth."

"Maybe it's old fashion, but these kids need a home. These kids need stability, and the only way you are going to get that for them, is for them to know where they live."

--Richard Edwards, J.D.

Past Chairman of the Family Law Committee of the  
Metropolitan Bar Association of St. Louis

"What I would like to see stressed in any new legislation would be a preference for parents to work together to devise custody plans, regardless of their proclivities for joint, sole or split custody of one sort or another. It seems to me that what we want to encourage is parental cooperation following a divorce, more than to encourage parents to divide up their children in one particular way or another."

--Andrea J. Clark, A.C.S.W.

Domestic Relations Worker  
Circuit Court of St. Louis County  
St. Louis County, Mo. 63105

"I want you to see a sample joint custody plan. I chose an old one (1984) and checked with both parents last week. Sam is very content, doing well in school and neighborhoods. Both parents, each remarried, report no problems."

--Dr. Joanne B. Gilden

Clinical Psychologist  
11 South Meramec, Suite 1107  
Clayton, Mo. 63105

#### GUARDIAN AD LITEM

"I believe that the child in every divorce should have a separate legal representative. I further think that any custody questions should be resolved in favor of the child's best interest, as evaluated by an outside team of professionals, including, but not limited to, the attorney for the child, a licensed clinical psychologist or psychiatrist who specializes in the treatment of children and families, representatives of other agencies, if any,

which have been involved with the child (teachers, ministers, etc.)"

--Mary-Angela B. Johnson, Director  
Montessori School  
915 Maryland Avenue  
Columbia, Mo. 65201

"I think the guardian ad litem can be a stronger statute or at least, more encouragement for courts, number one, to appoint guardians ad litem and also to appoint trained guardians ad litem."

I always feel that courts should have some kind of guideline or requirements. Like in probate, there the court-appointed guardian has to meet with the client and has to advise the client as to legal rights; has to do certain things."

--Richard Goldstein, M.S.W., J.D.  
310 Broadway  
Cape Girardeau, Mo. 63701

"It is probably not a bad idea to appoint a guardian ad litem every time where there are children. As I say, just because the parents agree on everything, does not mean it is the best for the child."

"There should be some provision for compensating the person, whoever it is."

--Richard Edwards, J.D.  
Past Chairman of the Family Law Committee of the  
Metropolitan Bar Association of St. Louis  
7733 Forsyth Boulevard, Suite 1000  
Clayton, Mo. 63105

## PART II

### VISITATION

Testimony regarding problems with visitation arose in three different contexts: father, grandparents, and protective parents. First, the fathers complained of denial of their visitation rights and criticized most bitterly their lack of an adequate remedy to enforce their court awards. They pointed out the inequitable treatment between enforcement of child support, which is administered by the state at no cost to the obligee, and the enforcement of visitation, which must be done privately and involves tremendous cost and time with little or no results. There was some testimony which disputed the scope of the denied visitation problem, but it was uncontroverted that the enforcement remedy, at its best, was woefully inept.

The second context in which visitation problems arose involved grandparents. Grandparents complained that the present statute is too narrow in its scope to adequately cover situations under which they are being denied visitation with their grandchildren. The present statute gives standing to grandparents of a deceased child or of a child with a pending dissolution, to petition the court for visitation when visitation with the grandchild has been denied. It is then within the discretion of the court to grant visitation. Situations, not covered by the statute, where denial occurs, made up the volume of the testimony. However, grandparents also complained of the cost and time that is involved to successfully secure their rights, even when their situation came within the scope of the statute. The situations cited most often, which fall outside the scope of the statute included:

- 1) when couples are separated, with no dissolution petition filed;
- 2) when an unwed mother of a child marries and the husband denies, or even the unwed mother herself;
- 3) when one parent's rights have been terminated;
- 4) when intact families become alienated toward their parents

An unexpected element of the testimony included frequent allegations of child abuse or neglect, not only by an in-law, but often against the grandparent's own child.

The third context within visitation problems involved situations where visitation rights had been awarded to a parent alleged of child abuse. The protective parent argued:

- 1) visitation is inappropriate in these situations, and
- 2) supervised visitation is inadequate protection for the child

One reason they feel it is inadequate is because most supervisors are family members who either do not supervise or are incapable of supervising. They urged the Committee to at least require the courts to make a finding of rehabilitation before awarding visitation privileges. They felt that giving an offender a second chance on the promise "it would not happen again" was tantamount to giving the offender a second chance to abuse or molest the child.



SELECTED SAMPLE TESTIMONY  
ON  
VISITATION

FATHER'S VISITATION

"Before the new laws came into effect, I had leverage to use against my ex-wife to make sure that I saw my child. I took her the check every two weeks when I picked up my daughter. She was always on time. Now, however, it is very different. She gets her money and I do not get the privilege of seeing my daughter."

"I feel that every father should pay the support due his child. The child cannot help it because the parents cannot get along; but, I feel that the laws should protect all the parties involved, not just the child and the ex-wife."

--Gary L. Cantrell  
739 18th Street  
Charleston, Il. 61920

"These payments have always been on time or early and have been paid in full. The same cannot be said with respect to my being awarded reasonable rights of visitation. Visitation was granted sporadically from the time of my daughter's birth until June, 1986, during which time her mother dictated all details and terms of visitation. Since June 1986, (1 year, 4 months) I have seen my daughter for a total of 3 1/2 hours, as the result of legal intervention. I am currently involved in litigation, initiated by her, requesting increased child support."

--Robert W. Teller  
7341 Amherst  
University City, Mo. 63130

"It is not only wrong, but irrational and unconstitutional for the state to continue its policy of enforcing child support payments, while at the same time ignoring enforcement of visitation rights."

--Walter J. Lembeck  
P.A.C.T. (Public Advocate Concept, Trend)  
P. O. Box 28504  
St. Louis, Mo. 63146

"I support laws which would sanction any parent which keeps a child from another parent or grandparent. "

--Leo M. Lawrence  
565 Water Street  
St. Charles, Mo. 63301

"It's so unfair for non-custodial fathers to be forced to forget about their children because of all the harassment



they have to put up with in order for them to see their children."

--Jane Tiberghien  
Route 3, Box 44  
California, Mo. 65018

"There presently is no procedure to assist the father in receiving his visitation with the children except to return to the courtroom. Whereas, the mother receives public funds to collect the child support due her, the father is forced to spend hundreds or even thousands of dollars for attorney and legal expenses just to obtain the visitation rights with his children which he is morally and legally entitled to receive."

--Joe A. Stokes  
1725 West Primrose  
Springfield, Mo. 65807

"I send her something every holiday so she will remember me. All I would like is to be a father and a part of her life."

--Billy Montgomery  
109 West Redwood  
Gillette, WY. 82716

"I think even if you have joint custody, you are not going to have resolved the issue of visitation."

--Nanette Laughrey, J.D.  
University of Missouri  
Columbia, Mo. 65211

"...about visitation and the need for a 'quick fix', to resolve a visitation problem. That should be something that would be short of the necessary full hearing so that you don't get to Christmas Eve--find out Mom or Dad is denying the visitation over the holidays--and then wait six months for a hearing until the issue is moot. People are frustrated with that process."

--Lori Levine, J.D.  
Chairman of the Family Law Section of the  
Missouri Bar Association  
211 East Capitol  
Jefferson City, Mo. 65101

"The Child Custody Study Committee is still working on visitation laws. I would hope to have a recommendation to the Board of Governors before the next session--a year from now--that would hopefully address that. A major problem in the visitation area is the need for a quick inexpensive fix for a visitation problem. In other words, it's the Wednesday afternoon before Thanksgiving...it's your year to have the children for the Thanksgiving holiday. You just called the custodial parent to indicate, 'I'll be over to get the three kids at 4:30 tonight pursuant to the order.',"

and she says, or he says, 'Oh, gosh! I forgot this was your year. We're going skiing.' That's a real problem. They call me at my office at 2:30 on the Wednesday before Thanksgiving and say, 'Jack, I've got a problem.' And my very astute response is, 'Yes, you surely do.' Maybe I place a phone call and the chance of that phone call being successful is about one out of fifty. So that's a real problem. I don't know exactly how to address it. You know there are those kinds of problems that I think the bench, the bar, and the legislature need to address."

--Jack Cochran, J.D.

Past Chairman of the Family Law Section  
of the Missouri Bar Association  
Route 1, Box 133  
Blue Springs, Mo. 64015

"My husband wants custody of the children. He hasn't even exercised his visitation 3/4 of the time since May. I mean he specifically took me to court, wanting visitation of the children on Father's Day...He didn't even call his children. They didn't get to give him their Father's Day present. He still hasn't gotten the card. He had visitation of my son on his thirteenth birthday. It turned into a most horrendous thing. He decided not to take him out after promising to take him to dinner and a show. And, when I came back from taking my kids to a swimming meet, they said, 'Dad's not coming over tonight.' My son was in tears. He was very emotionally distraught because his father decided not to go out with him. He is supposed to have visitation of the kids on these special occasions, and then he doesn't even come. He goes off to conventions and doesn't even take into consideration their emotional needs."

--Carolyn Sacha

2000 Cape LaCroix Road  
Cape Girardeau, Mo. 63701

"My husband decided to leave after 18 years of marriage. He also decided to quit his job."

"The problem that I have is that my husband does not see my children. I cannot force him to see my children."

"He has not talked to the children since June. He will pass a message to my oldest son, because my oldest son works right across the street from him. He does not talk to the children."

--Jan Palmer

Route 1, Box 231  
Rocheport, Mo. 65279

"My ex-husband has never bothered to take advantage of his visitation rights either. After one year of myself and his children calling him to come visit his children, we gave up. He has had no contact with his children, living in the same town for three years, by his own choice."

--Joyce Black Clague

320 Major Terrace  
Holts Summit, Mo. 65043

"But, even if I come in with what I consider to be a squeaky clean client, I can't get custody enforced. I think that's just terrible. I think that custody enforcement ought to be done. It will take away a good part of my business, but you know, we'll make it up. I think it ought to be enforced by the state. I just don't think people should have to save up their money, just so they can plan on trying in the future to see their kids."

--Lisa Kircher, J.D.

Newburger and Vossmeier  
393 North Euclid, Suite 300  
P. O. Box 8140  
St. Louis, Mo. 63156

#### GRANDPARENT VISITATION

"In 1982 two of my granddaughters were put up for adoption. I thought all I had to do was tell the court, 'I was the grandmother and wanted to adopt the girls', that was my God-given right, and there would be no problem. That is when I found out that I should have had legal representation. But even if I had, there is no law giving the grandparents or the extended family anything to petition the court with. We were the same as a complete stranger in the court's eyes."

"I'm the founder of Tri-state Grandparent's Rights Organization...We developed a support group and I definitely was appalled at what was happening to our fine family units. They were just being torn apart. Families from all walks of life were coming out of the closet with all the different heartbreaking problems that they were having. Some of them were being consumed emotionally, physically, and many financially. Many didn't have the finances to go to court."

"I have done some research about our membership and have learned that visitation had been denied because of:

their biological child was uncaring and vindictive or had spousal pressure--46%

their biological child's rights were severed by divorce--38%

their biological child parented the grandchild out-of-wedlock--11%

their biological child died and the surviving spouse denies--5%

I hope this will be of help to you. We contend 'once a grandparent always a grandparent.' Nothing severs this God-given relationship."

--Bonnie Essig

2301 South Florida  
Joplin, Mo. 64804

"We raised our grandson 6 years. No one told us what to do for him all that time. We supported him 100%. When the mother (our daughter) remarried, she took him away from us. The step-dad took full control over him. We were denied any visitation with him."

"We went to court, December 7, 1986. We get to see him one time a month."

--Jean Cox  
706 7th Street  
Monett, Missouri 65708

"In our experience our daughter had baby while she was a senior in high school. We took care of our granddaughter until she was 9 months old, while our daughter finished school and worked. Our daughter got married when her baby was 9 months old...When we take care of the baby and end up paying over \$2,000 on the hospital bill and the doctor bill, I feel we should have visitation rights."

--Judy Hayes  
Route 4, Box 71  
Marshfield, Mo. 65706

"My son, Stephen, age 21, died August 20, 1973, leaving a young widow and a 28 month old son. My daughter-in-law lived in Wichita, Ks., with her folks and kept in touch with me for a few months. Then I heard no more for ten years. My attempts to get in touch with her, and later trying to find her, failed. Then in late 1983, her parents got in touch with my older son. They had custody of Stephen's son and had been raising him for about the last 8 years. They made a trip down, and I was able to become acquainted with my grandson. Now I have the chance to be in touch with him often."

--Colleen Skorepa  
2819 South Joplin  
Joplin, Missouri 64804

"I feel that any grandparent should have the right to petition for visitation. A child can never have an excess of love, but can suffer from lack of it."

"I also would like to see some provision to prevent a judge from denying visitation rights because of hostile feelings of the child's parents toward the child's grandparents. I know from experience that children overlook the untrue sayings, barbs, and so forth. They are capable of accepting the fact that there is no love lost between those generations, but can still benefit from the close bond with their grandparents. Parents who stoop to bad-mouthing a child's grandparents will do so anyway, regardless if the grandparents are allowed to see their grandchildren or not. Instead of getting all that negativeness, they will get a balance of positive, nurturing love and care."

--Margaret A. Weber  
Route 5, Box 495

Warrensburg, Mo. 64093

"In a troubled parental situation, the child is apt to see the grandparents as the one 'safe harbor'. Grandparents can give the child that feeling of roots and identity. They can give the child that special undemanding love--the sense that 'I'm okay, you're okay'. The loving warmth, security and stability that the child needs now more than ever."

--Donald E. Ozburn

8131 Ditzler

Raytown, Mo. 64138

"What makes the bond between the grandparents and grandchildren so natural? Every heart seeks love...a grandparent is a living ancestor, capable of sharing the present, and also help prepare their grandchildren for the future. A grandchild is a special joy to the family that comes along at the right time in the older people's lives. It offers a special quality of life for both the young and old. This relationship should be preserved."

"We hired an attorney and went to court and got visitation rights. Getting these rights was one thing, enforcing them was quite another...On two occasions we hired a detective...This means that a person has to have money and determination, and absolutely determination...It was as much for enforcement as it was for the attorney. The court makes the decisions and then forgets about the case. For it's up to the plaintiff to continue feeding the court if he wants justice and that costs a lot of money. It takes a lot of time and determination, but time and determination is for naught if you don't have the money...It took four long years to get this accomplished."

--Violet C. Trotter

4639 Wildwood Drive

Springfield, Mo. 65807

"For the sake of the child, D.F.S. and the courts should listen to grandparents who allege child abuse instead of treating it as a reaction to a family spat."

"I still think grandparents should have the right to visit the children after they are adopted."

--Mr. & Mrs. Lawrence Bauer

4971 South Palmer

Springfield, Mo. 65804

"At a hearing regarding allegations of child abuse, no one sought the testimony of the grandparents who had reported it."

--Wensey Marsh

1410 West Cherokee

Springfield, Mo. 65807

"I have no standing to request visitation of my grandchildren because the parents have separated without filing for dissolution."

--Sandy Dickens

2242 North Missouri  
Springfield, Mo. 63803

#### SUPERVISED VISITATION

"I can substantiate the difficulty faced by a prosecuting attorney in attempting to convict an adult based on the testimony of a child. There are several problems that arise. The child may be too intimidated by his or her abuser to testify in front of him. There are strangers in the court room, hearing highly personal information about the child. Children may not have the verbal skills to adequately describe the abuse. Lastly, the child may simply not be old enough to differentiate dates and times of each abusive incident."

"In such cases, many non-offending parents see a divorce as the only way to protect their children from further abuse."

"We need to look at how divorce courts handle accusations of abuse. The issue in question is custody and visitation rights. The prospect of the abuser being granted visitation, often for whole weeks or weekends, can be devastating. Frequently the best a mother can hope for in cases in which an abusive father has been convicted but is not currently in jail, is supervised visitation."

"I recommend that legislation be passed for victims of sexual abuse. This legislation should state that the best interest of the child would be served by placing that child with the non-abusive parent in cases of reported sexual abuse and that supervised visitation be the only allowable means of contact with that child."

--Marcia Levin, M.S.W.

Victim Service Council  
7900 Carondelet Avenue  
St. Louis, Missouri 63105

"Far too frequently protection of the child is secondary to preserving the abuser's rights and the 'law'."

"The success of sexual offenders' rehabilitation has been less than pitiful. Yet these guys are allowed to be in proximity of those they have traumatized. In fact, the 'law' will order that to happen, and even allow other children in the family home to be continuously exposed to him. When the mother is finally convinced of the tragedy, she rarely leaves or demands that her husband leave the home. And the saga goes on and on and on."

"Can we blame parents for absconding with their children? We have created the problem. We continue to victimize children. There should be family oriented courts



with liberal powers to mandate strict treatment of the whole family, both as a constellation and as individuals."

"At all cost we should never re-expose a child to their abusive parents without a 100% clean bill of health from all professional resources available."

--Dick Babcock, Director  
Springfield Children's Home  
1212 West Lombard  
Springfield, Mo. 65806

"I address you, very briefly, on behalf of custodial parents whose children's lives have been in turmoil because of visitation granted without enough examination of individual circumstances."

"I suggest that, contrary to accepted practice, demanding visitation rights in such cases is NOT in the best interest of the children. If the non-custodial parent has not taken his continuing role in the children's lives seriously in the past, he is unlikely to be a positive influence on their present and future development."

--Carol Mickens, Parent  
Child Development Association  
Member of Citizens for Missouri's Children  
7443 Maple Lane  
Prairie Village, Kansas 66204

"Protective parents are financially penalized by Missouri judges because the judges do not award attorney's fees to protective parents who win in civil cases."

"...judges resort to the ploy of ordering family members of child molesters to 'police' their own relative. This is shoddy practice indeed, and it places the child's life on the line. It is a way to appear to be ordering supervised visitation, when in fact the visitation is not supervised. No background check is done on the family or the relatives of the molester, to see if they are capable--or interested--in protecting the child."

"The law should state that the supervisor cannot be a family member of the child molester."

"The statute on visitation in Missouri should be rewritten to state that it cannot be in the best interest of a child to be returned to an un-rehabilitated child abuser or molester, and that parental rights terminated for an indefinite period of time could only be ended by proof of treatment and rehabilitation."

"Abusive parents should, by law, have to pay attorney fees and court costs for protective parents."

"We must stop victimizing protective parents, since they are the biggest source of help for children."

--Rena Rayman  
1119 North Hillcrest  
Springfield, Mo. 65802

"Four to five thousand children are murdered every year by parents and caretakers. Forty percent of murdered child had been seen for maltreatment prior to, or at the time of, their deaths. This failure to protect children from murderous parents reveals a deep-seeded bias toward parents and against children."

"Studies recently have shown that fully 85% of all drug addicts and alcoholics had been abused as children; over 70% of prostitutes were abused as children, and 90% of prisoners were abused as children. In a recent study of 97 abused and neglected boys, 1/2 were convicted of serious crimes or became alcoholics or mentally ill, or died, at an unusually young age. These symptoms of mental illness and violence, promiscuity and self-hatred stay with people for their lives, but they can be changed if people are willing to intervene."

"We've heard testimony today of children who ask not to be sent back to visit or live with their abusers, and we're not listening to them. Must we wait until we keep creating our new generations of rapists and murderers and drug addicts?"

--Jeanne M. Lenzer, P.A.  
People Allied for Child Advocacy  
P. O. Box 17005  
Durham, N.C. 27705

"I have had my husband take my child when he was baby-sitting somewhere, and get 'high', having no car seat, no proper restraint at all for that child, and drive that child back home 'loaded'. I was surprised that he could stay on the road. If you don't think that scared the heck out of me..you have no idea what fear is...you have no idea what it's like to walk around on egg shells in your own home, wondering what's going to set off an explosion. What's going to happen to you when it happens...what is the court going to do for you?"

--Susan D. Harrison  
1542 Briarcliff  
Cape Girardeau, Mo. 63701

#### CUSTODIAL INTERFERENCE

"My two sons were abducted by their father on August 4, 1986. He was supposed to take them on a camping trip to Silver Dollar City. They never went to Silver Dollar City nor did they return as scheduled."

"I had to go to several police stations before I could file a missing person report. I was given stories about jurisdiction, liability and domestic interference."

"The Missouri Highway Patrol, Division of Missing Children, Sergeant Matthews was excellent. They are supportive and do provide guidelines to help you in your

search. They are handicapped because parental kidnapping is a misdemeanor in Missouri."

--Lore Timm

2709 West 51st Terrace  
Westwood, Ks. 66205

"The issuance of a felony warrant should be the overriding goal (from the legal standpoint) in an effort to locate missing children. The reasons for the significance of the felony warrant (as opposed to simply a misdemeanor warrant) are as follows: 1) a listing on the NCIC national computer; 2) FBI assistance; 3) ability to obtain a federal warrant for unlawful flight to avoid prosecution."

"With only a misdemeanor, none of the three above objectives can be obtained. The purpose of a listing on the national computer should be obvious. If the kidnapper happens to be stopped for a routine traffic violation in Missouri or any other state, his name will appear if there is a felony warrant. Without the felony warrant, there is no such listing in the national computer."

"Based upon my experiences in Lore Timm's case, I learned that the Canadian government would not allow extradition if there are only state felony warrants outstanding. The Canadian government, however, will recognize a federal warrant for unlawful flight to avoid prosecution."

--Michael E. McCausland, J.D.

Knipmeyer, McCann, Fish & Smith  
1800 Power & Light Building  
Kansas City, Mo. 64105

"The state of Missouri needs to enact its own Parental Kidnapping Law, automatically making it a felony to parentally abduct a child."

"A victim's assistance fund needs to be established for victim parents who have located their child and then are told they must incur all fees to recover their own child of whom they already have custody or legal visitation rights."

"The state of Missouri needs to allocate more money in the budget for: 1) The Missing Child Unit of the Missouri Highway Patrol and 2) The Child Find International, which has recovered over 475 children during the past four years."

--Child Find International

111 South Bemiston, Suite 513  
Clayton, Mo. 63105

"To date this search has cost nearly \$30,000 personally to the family--not counting the time and money across the nation from various agencies."

--Testimony submitted with name withheld by request

"My son was given custody. Krystal is 4 1/2 years old. And we haven't seen her since July 10th of this year and we have been unable to get any help from the authorities, none

whatsoever...We spent in excess of \$15,000 in attorney's fees, court costs and everything during this custody battle...when we first notified the authorities of her disappearance they listened but threw the matter aside telling us that it was nothing more than a civil matter. They didn't want to become involved. They were understaffed. They don't have time. They're underpaid...our money is gone, we can't hire a private investigator to find her."

--Mary Ellen Redding  
4406 Country Lane  
Joplin, Missouri 64801

"...when I went to the police authorities, he said, 'Don't tell me how to do my job'...because I couldn't understand when they said to me, 'It's no concern. It's just a domestic matter.' Just put it off to the side. And like it was brought out, I've lost my job. I've done everything I can."

--Steven Redding  
3540 Ruby Way  
Joplin, Missouri 64804



## PART III

### CHILD SUPPORT ENFORCEMENT

Children are growing up in debilitating poverty--greatly disadvantaged and handicapped for the rest of their lives.<sup>5</sup>

The poverty rate for female-headed single-parent families is nearly three times the national average for all families. This trend has disastrous implications for American women and children. Currently more than 18 million children live with divorced or separated parents, and experts predict that half of the children in the United States will spend some time during childhood living with one parent. The National Advisory Council on Economic Opportunity has estimated that by the year 2000, if current trends continue, virtually all of the Americans living in poverty will be women and children in single-parent families.<sup>6</sup>

Child support is a national disgrace moving the Federal government to step into domestic relations which was an area previously left to the states. The cause of this failure is three-fold:

1) Absence of Any Support Award--58% or only 5 million were awarded child support of the 8.7 million women raising children whose fathers were not living in the household in 1984;

2) Ineffective Enforcement--of those awarded child support in 1983, 1/2 received the full amount; 1/4 received partial payment; 1/4 received zero;<sup>8</sup>

3) Inadequate Support Awards--a Colorado study found that two-thirds of fathers were ordered to pay less per month for child support than they were spending on car payments. According to the most recent Census Bureau statistics, the average amount of court-ordered child support due in 1983 was only \$2290 per year, or \$191 per month. This is barely enough to raise one child at the poverty level, yet these meager awards covered an average of 1.7 children. After adjusting for inflation, child support payments actually decreased by 15% from 1978 to 1983.<sup>9</sup>

The Child Support Enforcement Program provides federally mandated child support establishment and enforcement services to recipients of AFDC and to the general public who make application for the services. The specific services provided are: location of absent parents; establishment of paternity; establishment of child support orders (either administratively or judicially), and; enforcement and collection of those orders once established.

Dwight F. High, Regional Representative of the Office of Child Support Enforcement, Department of Health and Human Services, reported that Missouri's program now has all federally required laws in place and could begin to consider new and innovative approaches, as well as solutions to implementation problems.

Mr. Michael R. Henry, Director of the Missouri Division of Child Support Enforcement, reported that the increase in collections has been accomplished in spite of a staggering caseload for the staff. Even with a 40% increase in staff from last session, estimates continue to be as high as 1,140 cases per investigator for AFDC cases and around 900 cases for non-AFDC cases. The non-AFDC cases have quadrupled in the last four years and the AFDC cases increased at a rate of 12% a year. The committee considered the

dollars appropriated for staff and services to be among the most cost-effective use of Missouri's tax dollar. (See exhibit--for collection of dollars expended and the income returned to general revenue.) Due to the program's effectiveness:

- 1) the needs of children are being met; and
- 2) they are being met by the parent, rather than the taxpayer

In spite of the improvement Missouri has made, the challenges of the unmet needs are tremendous. Current federal proposals include the following:

- 1) mandatory support guidelines;
- 2) immediate wage withholding;
- 3) greatly strengthened paternity establishment procedures; and
- 4) required computer systems development with specified completion deadlines.

Inadequate areas in Missouri's program include the following:

- 1) overburdened staff for collections;
- 2) no staff for modifications;
- 3) no staff for enforcement of health insurance (Cost to state in Medicaid payments has not been estimated.);
- 4) need for centralized data base for case information (Federal funding available at a 90/10 split.);
- 5) need for automatic transfer of funds to eliminate lag time of payments;
- 6) mechanisms to enforce payments from the self-employed;
- 7) need for judicial enforcement of contempt powers for support and visitation;
- 8) no informal or economical procedure for parties to access to attorneys or judges; and
- 9) abstracters are not picking up real property liens for child support judgments.

SELECTED SAMPLE TESTIMONY  
ON  
CHILD SUPPORT ENFORCEMENT

"I am happy to report that Missouri with the passage of the compliance bill last year and with the recent adoption of new guidelines for determining the amount of support obligations, now has all required laws in place. Missouri, like other states, must now concern itself with the full and effective implementation of these measures."

"Missouri is easily the most rapidly improving child support program in the region. Indeed, in increased child support enforcement collections for the 1981-86 period you ranked 7th in the nation with a whopping 344.8 % increase, and for the increase from 1985-86 you ranked 5th in the nation with 59.3 %"

"The Missouri campaign under the theme, 'Show-Me You Care' is a model for public awareness activity. Indeed, the director, Wayne A. Stanton, recently indicated 'here in Missouri, you're doing one of the best jobs in the nation in public education on child support enforcement.'"

"Tax offset is the easiest, quickest and cheapest way to take in huge amounts of child support money. At very little expense, \$3.80 per case, Missouri collected an average of \$517 per case through the Federal Tax Offset Program. Missouri ranked 14th in the nation, submitting 4.86."

--Dwight F. High

Regional Representative of the Office of Child Support  
Enforcement  
601 East 12th Street, Room 515  
Kansas City, Mo. 64106

"I have been bounced back and forth between the two agencies (Child Support Enforcement and the Prosecuting Attorney's Office ) with only promises to look into it with no results."

"I have come to understand that both agencies are grossly overloaded with cases such as mine and not enough manpower to sort through the abundance of red tape and paperwork. In the meantime, my children and I just sit and wait, year after year."

"With no aid from the state or my ex-husband, in order to make even that amount of money, I found myself working every job and hour I could fit into a day. I worked many low paying jobs, many unattractive jobs, and many long 16 hour days, going long periods of time without even a day off."

"What greater debts are there than to our children? The courts will pick up someone for a \$10.00 bad check faster than they will someone \$10,000.00 in arrears of its own court order."



"...I didn't ask the state for assistance in a material way. I just asked, begged and cried for the courts to enforce their own court orders."

--Joyce Black Clague  
320 Major Terrace  
Holts Summit, Mo. 65043

"Hi! My name is Danny. I am writing you this letter to tell how I feel being 13 years old and about my father not paying his child support and how it has effected (sic) me."

"I've gone to school with holes in my shoes when I'd (sic) rather not have, but we didn't have the money. His child support could have bought new shoes for me instead of my mother beating her brains out at work trying to get the money."

--Danny Black  
320 Major Terrace  
Holts Summit, Mo. 65043

"Lack of child support is a major issue for most of our members. In addition, several of our members are in the midst of ugly custody battles. The children of these single parents are treated like bouncing balls, jumping from one parent's home to the other. There seems to be little consistency and respect for the child's welfare, when deciding custodial arrangements."

"In summary, contrary to common belief, Jewish Single Parents are suffering greatly from the trauma of divorce. The number of Jewish Single Parents is slowly reaching the national average, and demographers feel that by the year 2000, one out of every two Jewish marriages will end in divorce."

--Ken Schwartz, Supervisor of the Family Program Department  
Shelle Witten, Chairperson of the Single Parent Family Committee  
Jewish Community Centers Association  
#2 Millstone Campus  
St. Louis, Mo. 63146

"My husband does not want to give me enough child support. We may have to sell the home, me go out and get a job. I haven't been in the workforce for over 19 years. At my age and lack of experience, I think that it is more important for me now to be with three teenagers and a nine-year old child, because I've always been in the home and been dedicated."

"It's (standard of living) changed drastically. I mean, the kids refer to ourselves now as being really poor."

--Carolyn Sacha  
200 Cape LaCrois Road  
Cape Girardeau, Mo. 63701

"One of the problems that we have as far as child support enforcement--stems from the awards originally."

--Adrianne Swiener, President

C.A.U.S.E.

P. O. Box 32063

St. Louis, Mo. 63132

"After I was divorced I was working two jobs to make sure that my children were fed and cared for. If it hadn't been for my mother at night and during the evening keeping the children I would have been 'up the creek without a paddle'. I received \$15 per child which amounts to \$90 every two weeks. I'm still receiving that after 11 years. The complaint is not that he is not giving anything, but these children are not 15, 14, and 12 anymore."

"My son set down and figured out \$15 a week will not buy him bus fare and lunch for the week. Bus fares are \$3.75 for student passes."

--Geraldine Martin

4459A Clarence

St. Louis, Mo. 63115

"My point is that the Child Support Unit is clearly operating for the sole benefit of the custodial parent."

--Debbe McCutchen

580 Queen Ann Drive

Hazelwood, Mo. 63042

"Certain women's groups and lawmakers have pushed to make divorce a profitable situation for women. The new percentage standards (for child support) range from 17% for one child, to 35% for 5 or more children, of a man's net income. Do two parent families really use this much of their income exclusively for their children? Anyone who says they do, either needs a financial advisor or they are a liar. This is not bad income just for being of a certain gender."

--Richard L. Rogers

Parents Demanding Equal Justice (for Children,  
Step-Parents, and Grandparents)

P. O. Box 1595

Florissant, Mo. 63032-1595



## PART IV

### DIVORCE MEDIATION

Although divorce mediation was the topic assigned to the Interim Committee, most discussion focused on mediation within the context of custody and visitation disputes. The primary benefit of mediation was the removal from the adversarial system of issues which require a continuing relationship and contact. Benefits include the following:

- 1) enhancement of cooperation;
- 2) control of the agreement (with the effect that better enforcement results when the parties are given a role in the agreement);
- 3) less expensive than contested case

No one testified against mediation as a viable option of dispute resolution. The only disagreement was on the issue of whether mediation should be mandated or permissive. Even supporters of mediation did not think it appropriate for domestic violence cases because of the unequal balance of power. Despite mediations acceptance as a positive alternative, the question of cost, qualifications, and administration were never resolved.

A pattern of testimony emerged from all areas of the state which revealed disrespect and deep resentment against the legal system in general and lawyers and judges in particular. Examples of misinformation given by attorneys became a familiar story as well as insensitive treatment by judges. Both mothers and fathers complained of discrimination against the pro se party. The cost of justice has become too expensive and decisions affecting children's lives as well as their parents are being based on the cost and not their best interest.



SELECTED SAMPLE TESTIMONY  
ON  
MEDIATION

"I have all the problems of being submerged in an absolute deluge of custody, visitation, child support cases and have little solution. Any assistance including mediation in these areas would help immensely."

--William H. Pinnell  
Circuit Judge  
39th Judicial Circuit  
P. O. Box 473  
Monett, Mo. 65708

"But again, I come back to my basic perspective that where parents are having trouble, either pre-divorce or post-divorce, they need to have some kind of third party or third parties to get in there with a different perspective...as long as there's an efficient, effective way for somebody to take control of that dispute and make some efforts to resolve it. And, probably the last resort of resolving disputes would be the courts."

--Richard Goldstein, M.S.W., J.D.  
310 Broadway  
Cape Girardeau, Mo. 63701

"...I'm interested in some form of an institution promoted mediation."

"Mediation could be used in the courts, by court staff, to screen people for their potential to make their own custody plans, because everybody's not going to go out and maybe people won't be able to afford a private (mediator), and that gets into the of issue--affordability."

--Tom Weber, Social Worker  
St. Louis County Juvenile Court  
Courts Building, Room 438  
7900 Forsyth  
Clayton, Mo. 63105

"...I would advocate that the Courts be given the authority to send divorcing parents through some sort of mediation process, whether it is court-based, in the private sector, or some combination of both."

--Andrea J. Clark, A.C.S.W.  
Domestic Relations Worker  
Circuit Court of St. Louis County  
Clayton, Mo. 63105

"Truly, we should be discouraging fighting, and lawyers cannot do that. They are trained in an adversarial system. Their best function is being adversaries, and that's why I have been so impressed by the capacity and effectiveness of mediators. It is an alternative resolution of conflict."

--Dr. Joanne B. Gilden  
11 South Meramec, Suite 1107  
Clayton, Mo. 63105

"Divorce mediation, I think, sounds like a wonderful way for two adults to arrive at an equitable settlement. And I think when there's no violence that often it may work the way it's intended to. But when there is violence, there are other things going on in that relationship that prevent mediation from being what it could be without violence. When one party has been abused, harassed and threatened, there are long-term effects on the power in that relationship. You just do not continue to stand up for what you believe is right and try to negotiate with someone who has over a period of years battered you. It's just not possible. The ability to withstand that is gone. It's been destroyed. In addition many times men who are abusive (I sometimes call them great cons), can behave very reasonably in front of you or I, in front of a mediator, and in front of a judge; but at the same time be continuing throughout that process to apply undue pressure, harassment and threats to the women who is already very afraid."

--Nelya H. Warner  
ALIVE (Alternatives to Living in Violent Environments)  
P. O. Box 11201  
Clayton, Mo. 63105

"...what I think is the more important part and what I'd hope the committee will focus its attention on, in terms of processes as opposed to outcomes, is giving people access to the system, in some thoughtful ways, without presuming that there should be specific results. Instead of talking about 'preferential' versus 'presumptuous' or talking about amounts, talking about how we make sure that people know as much information about the process, and have an opportunity to have some kind of form available to them, that those issues can be discussed in a thoughtful way. That's why I came to talk to you about mediation. It is not a panacea. I am clearly a lawyer and I am not looking to supplant or otherwise do away with either lawyers or the legal system."

"I am guardedly in favor of a mandated mediation legislation."

"...the critical aspect of this mediation process will be the qualifications of those mediators..."

"...the critical factor will be in protecting people in mediation, and the qualifications for mediators. I, as a mediator, will not ever mediate when I would have some reason to believe that there has been spouse abuse..."

--Robert Benjamin, M.S.W., J.D.  
Mediation Services of St. Louis  
8000 Bonhomme, Suite 201  
Clayton, Mo. 63105

"I favor permissive mediation because I believe it is not appropriate for all cases and parties should be given a procedure to object to an order to mediate."

--Professor Mary Kay Kisthardt  
University of Missouri Law School  
5100 Rockhill Road  
Kansas City, Mo. 64110

"This whole committee investigation was not just geared to 'Joint Custody'. It was a look at the whole custody situation, and we heard people saying that they have crying needs for things like mediation."

"...we're not doing anything to get the persons together in some sort of a forum where they can hopefully work on their own problems."

--Jack Cochran, J.D.  
Past Chairman of the Family Law Section  
of the Missouri Bar Association  
Route 2, Box 133  
Blue Springs, Mo. 64015





## BIBLIOGRAPHY

1. F.B.I. Uniform Crime Report (1979)
2. American Bar Association, Young Lawyers Division, Center for Child Advocacy and Protection, U.S. Commission on Civil Rights, The Federal Response to Domestic Violence II (January 1982).
3. Pagelow, Mildred Daley (1984) Family Violence, 207 (New York:Prager).
4. Straus, Gelles & Steinmetz, Behind Closed Doors (1980).
5. Remarks of Dwight F. High, Regional Representative of the Office of Child Support Enforcement before the Interim Committee on November 13, 1987.
6. Goldfarb, What Every Lawyer Should Know About Child Support Guidelines, American Bar Association, Section of Family New Compendium 231 (1987).
7. Id.
8. Id.
9. Id.



## INFORMATIONAL DATA

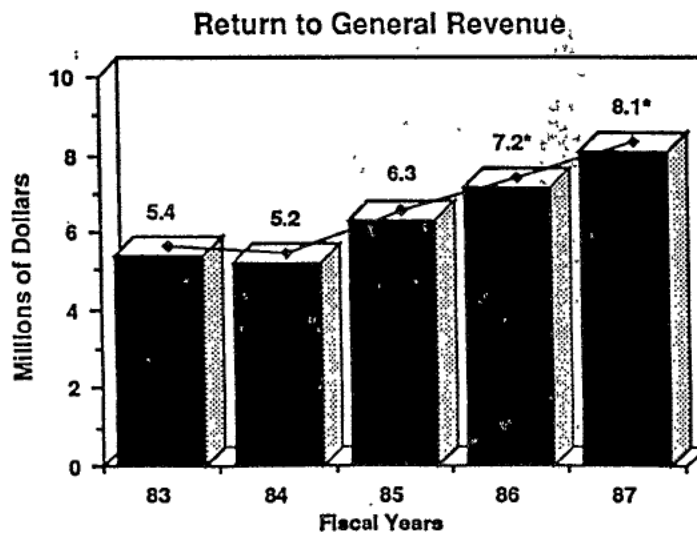
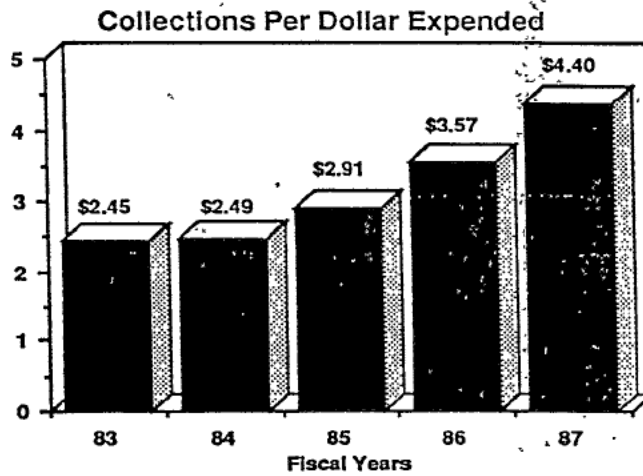
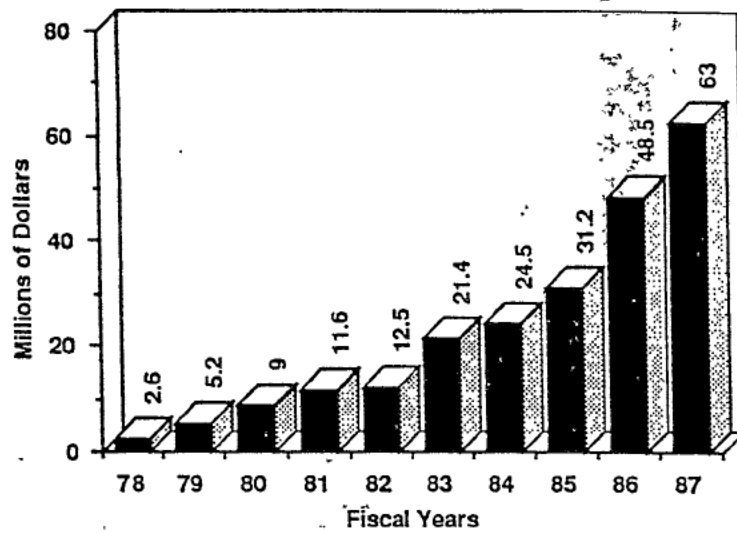
by the agency.

### Client Profile:

AFDC Caseload	239,340
Non-AFDC Caseload	63,147
Total Caseload	302,487
 Paternity Caseload	 122,034
 Average Number of Children per family	 2.06
 Total Court-Ordered Obligations	 130,546
 % Male Absent Parent	 93%
% Female Absent Parent	7%
 Average Monthly Obligations	
AFDC	\$123.32
Non-AFDC	\$192.91
 Average Arrears (Cases with obligation only)	
AFDC	\$1,673
Non-AFDC	\$3,543
 Cases with FY 87 Payments	
AFDC	16,455
Non-AFDC	24,561
 Median Age of Custodial Parent	
AFDC	29
Non-AFDC	34

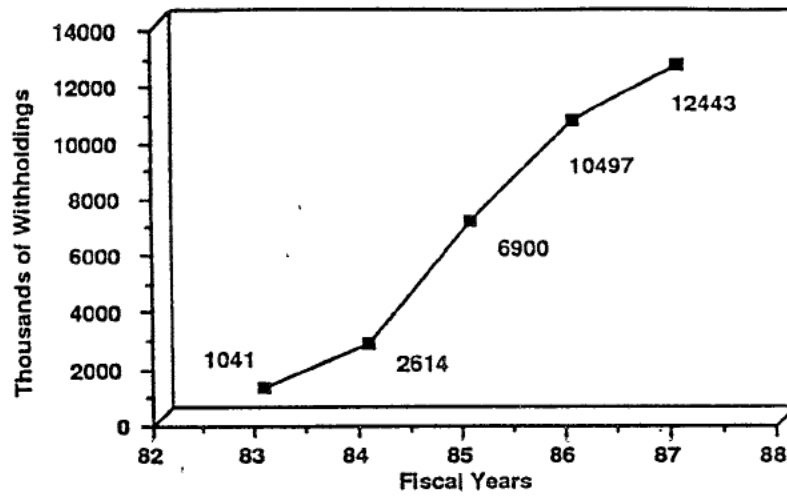
### Significant Data: Graphs/Charts

1. DCSE Total Collections by FY
2. Collections Per Dollar Expended
3. Return to General Revenue
4. Income Withholding Actions
5. Referrals to Prosecuting Attorneys
6. Incentives to Counties
7. Federal Tax Refund Interceptions
8. State Tax Refund Interceptions
9. Unemployment Compensation Intercept
10. Map/Caseload Distribution
11. Map/Staff Allocations

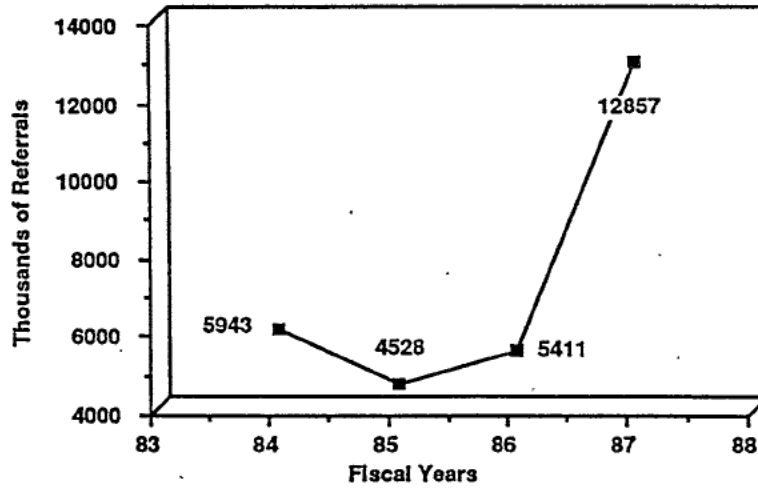


\* Gross GR return before \$50.00 Disregard Distribution

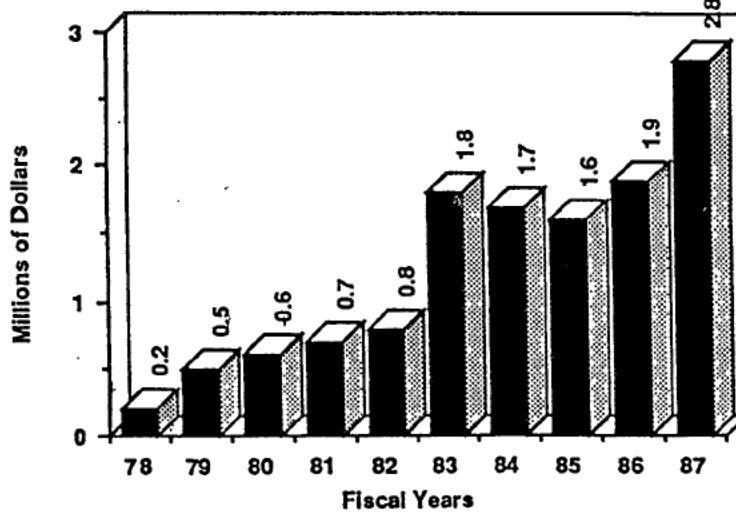
### Income Withholding Actions

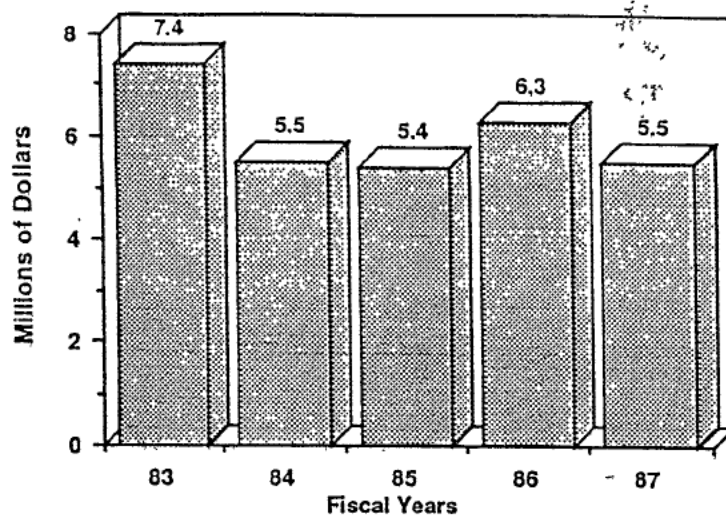


### Referrals to Prosecuting Attorneys

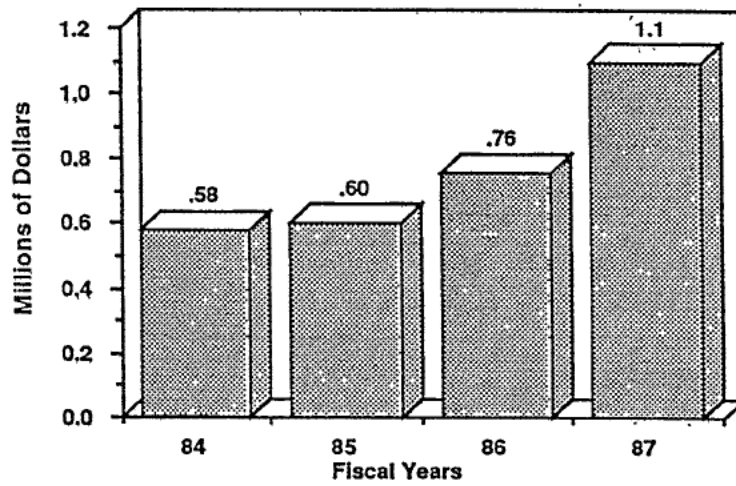


### Incentives To Counties

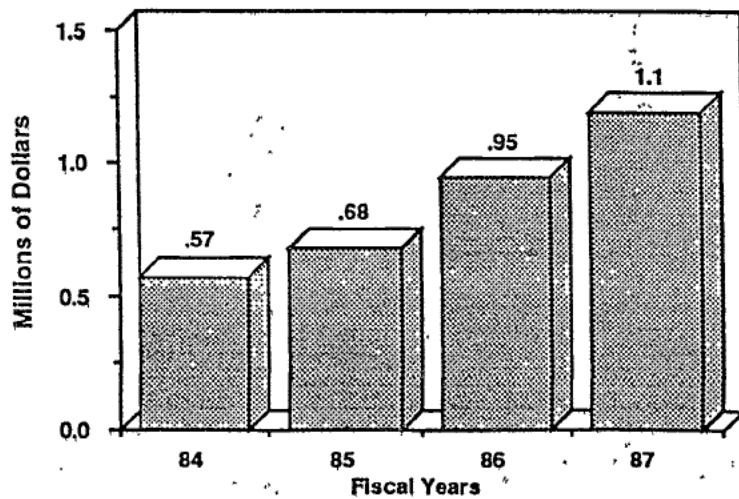




### State Tax Refund Interceptions

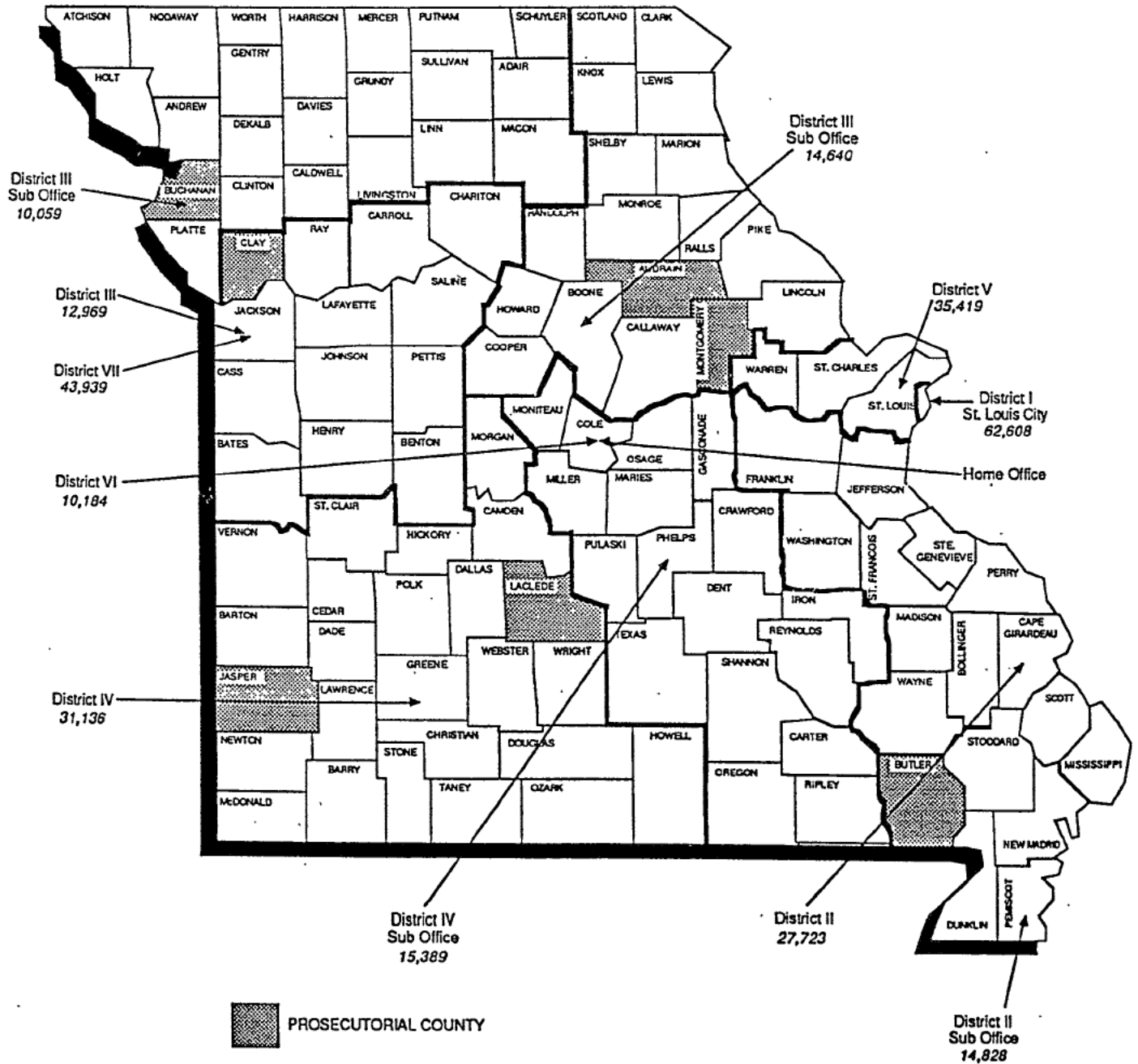


### Unemployment Compensation Intercept



# Division of Child Support Enforcement

## Caseload Distribution

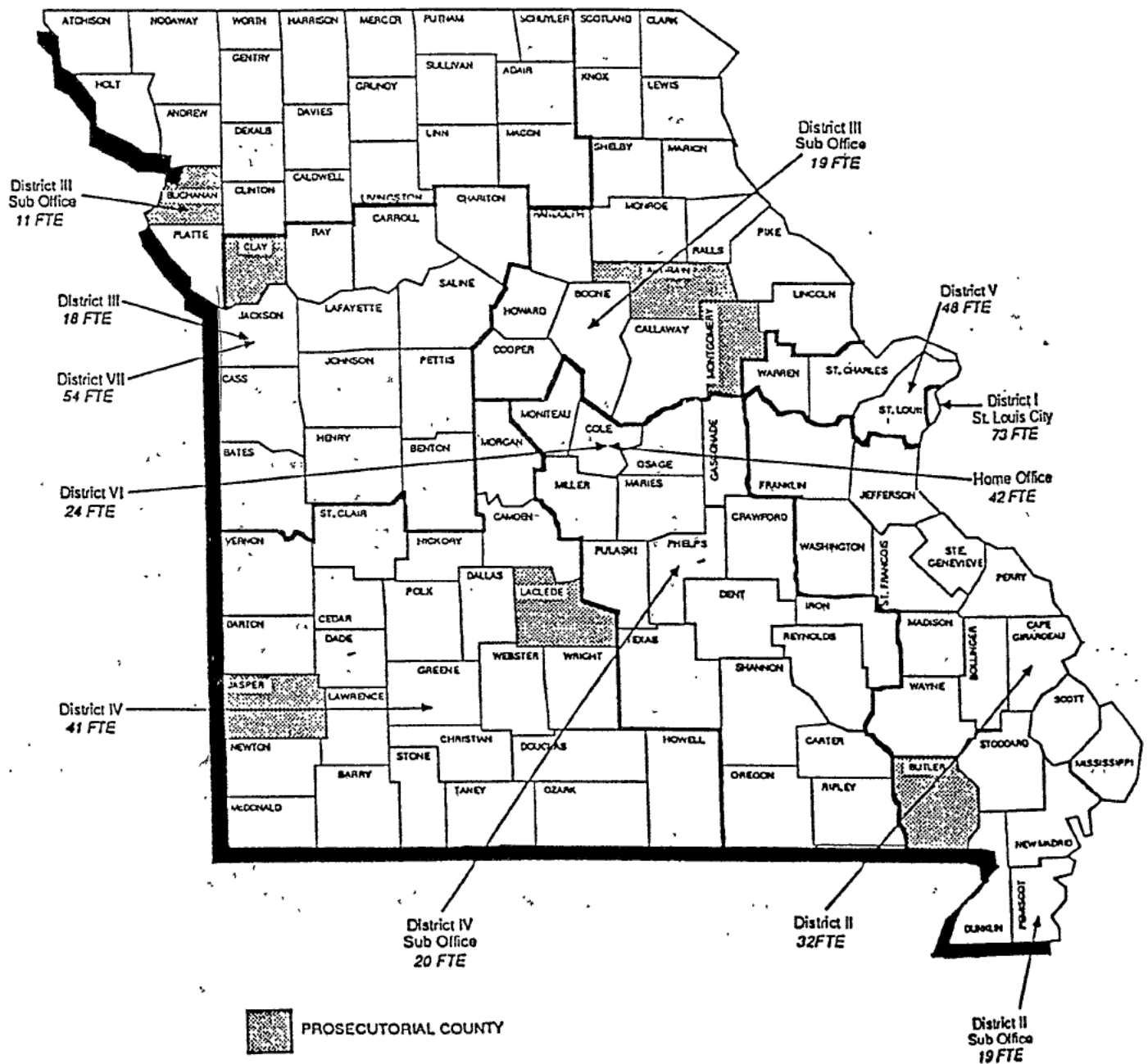


9/30/87



# Division of Child Support Enforcement

## Staff Allocations



# HB 1272

L. R. No. 2443-2

## AN ACT

To repeal sections 452.330, 452.335, 452.340, and 452.375, RSMo 1986, relating to domestic relations, and to enact in lieu thereof four new sections relating to the same subject.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 452.330, 452.335, 452.340, and 452.375, RSMo 1986, are repealed and four new sections enacted in lieu thereof, to be known as sections 452.330, 452.335, 452.340 and 452.375, to read as follows:

452.330. 1. In a proceeding for dissolution of the marriage or legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse his property and shall divide the marital property in such proportions as the court deems just after considering all relevant factors including:

[(1) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(2) The value of the property set apart to each spouse;

(3)] (1) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children; [and]

(2) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(3) The value of the nonmarital property set apart to each

EXPLANATION -- Matter enclosed in red-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

spouse;

(4) The conduct of the parties during the marriage[.]; and

(5) Custodial arrangements for minor children.

2. For purposes of sections 452.300 to 452.415 only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired by gift, bequest, devise, or descent;

(2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of legal separation;

(4) Property excluded by valid written agreement of the parties; and

(5) The increase in value of property acquired [prior to the marriage] pursuant to subdivisions (1) to (4) of this subsection, unless marital assets including labor, have contributed to such increases and then only to the extent of such contributions.

3. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation or dissolution of marriage is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. [Each spouse has a common ownership in marital property which vests not later than the time of commencement by one spouse against the other of an action in which a final decree is entered for dissolution of the marriage or legal separation, the extent of the vested interest to be determined and finalized by the court pursuant to this chapter.] The

presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2 of this section.

4. Property which would otherwise be nonmarital property shall not become marital property solely because it may have become commingled with marital property.

[4.] 5. The court's order as it affects distribution of marital property shall be a final order not subject to modification; provided, however, that orders intended to be qualified domestic relations orders affecting pension, profit sharing and stock bonus plans pursuant to the U. S. Internal Revenue Code shall be modifiable only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of order.

[5.] 6. A certified copy of any decree of court affecting title to real estate [shall forthwith] may be filed for record in the office of the recorder of deeds of the county and state in which the real estate is [situate] situated by the clerk of the court in which the decree was made[, and the]. Such filing fees shall be taxed as costs in the cause.

[452.335. 1. In a proceeding for nonretroactive invalidity, dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order to either spouse, but only if it finds that the spouse seeking maintenance

(1) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(2) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(1) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs

independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) The standard of living established during the marriage;

(4) The duration of the marriage;

(5) The age, and the physical and emotional condition of the spouse seeking maintenance;

(6) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance; and

(7) The conduct of a party seeking maintenance during the marriage.]

452.335. 1. In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may order a party to pay for the support of the other party, any amount and for any period of time, as the court may deem just and reasonable. In making the award, the court shall consider all of the following circumstances of the respective parties:

(1) The comparative earning capacity of each spouse, taking into account the following:

(a) The marketable skills of the supported spouse, the job market for those skills, the time and expenses required for the supported spouse to acquire the appropriate education or training to develop those skills, and the possible need for retraining or education to acquire other more marketable skills or employment;

(b) The extent to which the supported spouse's present or future earning capacity is impaired as a result of domestic duties performed by the supported spouse during the course of the marriage;

(c) The extent to which the supported spouse contributed to the attainment of an education, training, a career position, or a license by the other spouse;

(d) The extent to which the supported spouse has lost earnings, seniority or retirement benefits as a result of domestic duties performed during the course of the marriage;

(2) The reasonable needs of the parties considering the standard of living established during the marriage, taking into consideration any inequitable disparity in the parties' standard of living which may occur as a result of the dissolution of marriage or legal separation;

(3) The obligations and assets, including the separate property of each;

(4) The duration of the marriage;

(5) The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in the custody of the spouse;

(6) The age and health of the parties;

(7) The economic opportunity cost of child custody after dissolution of marriage or legal separation, including but not limited to lost or reduced career or employment opportunities;

(8) The conduct of the parties during the marriage; and

(9) Any other relevant factors.

2. Any order for maintenance may be made retroactive to the date of filing of the petition or to any subsequent date.

3. The maintenance order shall state if it is modifiable or nonmodifiable. If the order does not so state, the court order shall be modifiable. The court may order maintenance which includes a termination date but which may still be made modifiable by the court in its order so that the maintenance may be decreased, increased, terminated, extended, or otherwise modified based upon a substantial and continuing change of circumstances which occurred prior to the termination date of the original order.

452.340. 1. In a proceeding for [nonretroactive invalidity,] dissolution of marriage, legal separation[, maintenance,] or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

(1) [The father's primary responsibility for support of his child;

(2)] The financial needs and resources of the child;

[(3)] (2) The financial resources and needs of the [custodial parent] parents;

[(4)] (3) The standard of living the child would have enjoyed had the marriage not been dissolved;

[(5)] (4) The physical and emotional condition of the child, and his educational needs[; and

(6) The financial resources and needs of the noncustodial parent].

2. By January 1, 1989, in order to assist the court in the determination of the amount of an award, the supreme court shall provide by supreme court rule, as a rebuttable presumption, guidelines for the establishment of all child support obligations, including joint custody and split custody arrangements. Beginning on January 1, 1989, child support shall be established in accordance with such guidelines unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption that the application of the guidelines will result in a fair and equitable child support order.

3. Unless otherwise ordered, support payments shall

continue during a period when the child is not residing in the home of the parent receiving support.

[452.375. 1. As used in this section, unless the context clearly indicates otherwise:

(1) "Joint legal custody" means that the parents share the decision-making rights, responsibilities, and authority relating to the health, education and welfare of the child, and, unless allocated, apportioned, or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities, and authority;

(2) "Joint physical custody" means an order awarding each of the parents significant periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent and continuing contact with both parents.

2. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parents as to his custody;

(2) The wishes of a child as to his custodian;

(3) The interaction and interrelationship of the child with his parents, his siblings, and any other person who may significantly affect the child's best interests;

(4) The child's adjustment to his home, school, and community;

(5) The mental and physical health of all individuals involved; and

(6) The needs of the child for a continuing relationship with both parents and the ability and willingness of parents to actively perform their functions as mother and father for the needs of the child.

3. As between the parents of a child, no preference may be given to either parent in the awarding of custody for the sole reason that the parent is the mother or the father of the child, nor because of the age or sex of the child. The court may award joint physical custody or joint legal custody, or both, to both parents or sole custody to either parent, or, when the court finds that each parent is unfit or unable, and that it is in the best interest of the child, then to a third party.

4. Any decree providing for joint custody shall include a specific plan setting forth the terms of such custody.

5. Unless a noncustodial parent has been denied visitation rights under section 452.400, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

6. An award of joint custody does not preclude an award of child support pursuant to section 452.340. The court shall consider the factors contained in section 452.340 in determining an amount reasonable or necessary for the support of the child.]



452.375. 1. The general assembly finds and declares that it is the public policy of this state to assure children frequent and meaningful contact with both parents after the parents have separated or dissolved their marriage, and that it is in the public interest to encourage parents to share the decision-making rights and responsibilities of child rearing, in order to effectuate this policy.

2. During the pendency of any proceeding where the custody or welfare of a child is involved, the court, after notice and hearing, may make such order for or pertaining to the custody or welfare of the child as may seem proper, upon the court's own motion or upon the motion of any party to the proceeding. Such order may include, but not be limited to, the appointment of a person who, the court finds, is trained and competent to act as mediator or counselor to assist the parents in any matter pertaining to the custody or welfare of the child, including, but not limited to, counseling for the purpose of improving cooperation between the parents with respect to the child and mediation for the purpose of developing a specific custody plan. Unless agreed by the parties, any such order referring the parties to a counselor or mediator shall not unduly delay the trial of the action by the court. Any such order referring the parties to a counselor or mediator may be terminated or modified for good cause shown. A person appointed by the court as counselor or mediator under this section may be awarded a reasonable fee to be set by the court and taxed as costs in the proceeding.

3. Custody shall be awarded according to the best interests of the child, in the following order of preference:

(1) Joint custody:

(a) To both parents, jointly, pursuant to the definition of

joint custody in subsection 6 of this section. An award of joint custody shall not be denied solely for the reason that one parent opposes a joint custody award;

(b) The court shall order a joint custody plan to be written for implementation of the joint custody order which may include a provision for mediation of disputes. Such written plan may be suggested by both parents acting in concert, or one parent acting individually, or, if neither of the foregoing occurs, the plan shall be provided by the court. In all cases, the joint custody plan approved and ordered by the court shall be in the court's discretion;

(2) Sole custody; or

(3) Third party custody:

(a) When the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child manifestly demands, and that it is in the best interests of the child, then custody shall be awarded to any other person or persons deemed by the court to be suitable and able to provide an adequate and stable environment for the child. Before the court places custody with a third person under this subdivision, the court shall make that person a party to the action;

(b) Under the provisions of this subsection, any person may petition the court to intervene as a party in interest as provided by law.

4. When making an award for custody to either parent, the court shall consider, in addition to the factors listed in subsection 5 of this section, which parent is more likely to allow the child frequent and meaningful contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's age, sex, or financial status nor

because of the age or sex of the child.

5. When awarding custody in accordance with the best interests of the child, in the order of preference as set forth in subsection 3 of this section, the court shall consider all relevant factors including but not limited to the following:

(1) The wishes of the child's parents as to his or her custody;

(2) The wishes of the child as to his or her custodian;

(3) The needs of the child for a continuing relationship with both parents and the ability and willingness of the parents to actively perform their functions as mother and father for the needs of the child;

(4) The interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interests;

(5) The child's adjustment to his or her home, school and community; and

(6) The mental and physical health of all individuals involved, including any history of abuse of any individuals involved.

The order in which the factors are listed in this subsection is not meant to imply that any one factor is necessarily to be given greater weight than another in any particular custody determination.

6. Joint custody is a custody arrangement which provides that:

(1) Each of the parents shall be awarded periods of time during which a child resides with or is under the care and supervision of each parent in such a way as to assure frequent and meaningful contact between the child and each of the parents. Subject to the foregoing, the specific periods of time

a child resides with each of the parents shall be based upon the particular circumstances of the parents and the child, in each case;

(2) The parents share, or shall have voluntarily allocated or the court shall have decreed between them, the decision-making rights, responsibilities and authority relating to the health, education and welfare of a child; and

(3) The parents are obligated to exchange information concerning the health, education and welfare of the child, and unless allocated, apportioned or decreed, the parents shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

7. Unless a noncustodial parent has been denied visitation rights under section 452.400, access to records and information pertaining to a minor child, including but not limited to medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

8. An award of joint custody does not preclude an award of child support pursuant to section 452.340. A modification order establishing joint custody, in and of itself, shall not constitute grounds for modifying a support order.



# HB 1273

L. R. No. 2444-1

## AN ACT

To repeal sections 452.345, 452.355, 454.425, 454.450, 454.460, 454.476, and 568.040, RSMo 1986, and sections 452.350, 452.370, 454.435, and 454.505, RSMo Supp. 1987, relating to enforcement of support obligations, and to enact in lieu thereof twenty-three new sections relating to the same subject, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 452.345, 452.355, 454.425, 454.450, 454.460, 454.476, and 568.040, RSMo 1986, and sections 452.350, 452.370, 454.435, and 454.505, RSMo Supp. 1987, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 302.700, 302.701, 302.703, 302.705, 302.707, 302.709, 302.711, 302.713, 302.715, 452.345, 452.350, 452.355, 452.370, 454.425, 454.435, 454.450, 454.460, 454.476, 454.505, 454.506, 568.040, 1 and 2, to read as follows:

302.700. As used in sections 302.700 to 302.715, the following terms mean:

(1) "Debt", any liquidated sum due and legally owed to any state agency or the amount of any support obligation which is past due and legally owing, if such support obligation is being enforced by the division of child support enforcement of the Missouri department of social services;

(2) "Department", the Missouri department of revenue;

(3) "Director", the director of the Missouri department of revenue;

(4) "State agency", any department, division, commission, office or agency of the state of Missouri.

302.701. A state agency may issue a notice of certification for suspension of driving privileges to an operator or chauffeur who owes a debt of at least one thousand dollars. The notice

**EXPLANATION** -- Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

shall be sent to the operator or chauffeur by certified mail and shall state:

(1) The name of the person or state agency to whom the debt is owed;

(2) The amount of the debt as of the date of the notice;

(3) That if the operator or chauffeur disputes the existence of the debt, he may, within thirty days after being served a copy of the notice by certified mail, contact the state agency office which sent the notice and request a negotiation conference. If the state agency and the operator or chauffeur do not enter into an installment agreement for repayment of the debt, the operator or chauffeur may request a hearing with the state agency within twenty days of the negotiation conference;

(4) That if the operator or chauffeur disputes the existence of the debt and he does not request a negotiation conference or he fails to attend the scheduled negotiation conference as provided for in subdivision (3) of this section, he may, within thirty days after being served a copy of the notice by certified mail, mail a request for hearing to the state agency office which issued the notice;

(5) That if a timely request for hearing is received by the appropriate agency office, and if such request raises factual questions requiring the submission of evidence, the operator or chauffeur shall have the right to a hearing before an impartial hearing officer;

(6) That the operator or chauffeur has the right to be represented at the hearing by an attorney of his own choosing, and has the right to obtain evidence and examine witnesses as provided for in chapter 536, RSMo, together with an explanation of the procedure he must follow in order to exercise such rights;

(7) That if no timely written request for hearing is

received, the state agency may certify to the director the existence of a debt; .

(8) That certification of a debt requires the director to suspend the license and driving privileges of the operator or chauffeur;

(9) That the suspension will continue until the debt is paid in full, adjudicated satisfied by court order, set aside by court order, discharged in bankruptcy or until the operator or chauffeur has entered into an installment agreement for repayment of the debt; and

(10) Such other information as the certifying agency finds appropriate.

302.703. At a hearing before the state agency, a certified copy of the judgment or other documentation establishing the existence of the debt, and a sworn or certified statement of the amount of the debt which remains unsatisfied shall constitute prima facie evidence that the operator or chauffeur owes a debt. Once the prima facie case is established, the operator or chauffeur may assert only mistake of fact and inability to pay as defenses to the certification of the debt to the department. Mistake of fact shall mean an error in the amount of the debt or an error as to the identity of the debtor. The operator or chauffeur shall have the burden of proof as to these issues. If the operator or chauffeur meets his burden of proof as to the issue of inability to pay the entire debt or previously agreed upon installment payments on the debt, the hearing officer may order the operator or chauffeur to make installment payments on the debt. An order to make installment payments shall be treated as an installment agreement for the purposes of subdivision (3) of section 302.705. The hearing provided for under this section shall be held in accordance with the procedures provided for in



chapter 536, RSMo.

302.705. A state agency may certify to the director the finding that the operator or chauffeur owes a debt when:

(1) After receiving the notice required under this section, the operator or chauffeur fails to request a hearing within the required time;

(2) After an administrative hearing and any appeals therefrom, the final decision is that the operator or chauffeur owes a debt; or

(3) The operator or chauffeur is not current in making payments under an installment agreement for repayment of the debt, as provided for in section 302.701, after receiving thirty days' notice of such noncompliance by the certifying agency; however, no notice of noncompliance need be sent by the certifying state agency if the operator or chauffeur has received a previous letter of noncompliance from the certifying state agency within the previous twelve months.

302.707. 1. The director shall suspend the driving privileges of any operator or chauffeur upon certification by a state agency to the department that the operator or chauffeur owes a debt.

2. The suspension provided for in this section is effective as of the date of mailing of notice of suspension by the department, and notwithstanding the provisions of section 302.190, shall continue until the state agency files a notice with the department provided in section 302.711.

302.709. Upon suspension of a license under the provisions of sections 302.700 to 302.715, the operator or chauffeur whose license is suspended may apply for hardship driving privileges pursuant to the provisions of section 302.309.

302.711. A state agency which has certified a debt to the

director shall file a notice to revoke the suspension with the department when:

- (1) The debt is paid in full;
- (2) The debt has been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy;
- (3) The operator or chauffeur has entered into an installment agreement for repayment of the debt; or
- (4) The grounds for certification did not exist at the time of certification.

302.713. The remedy authorized by this section is in addition to and not in substitution for any other remedy available by law.

302.715. State agencies shall have the authority to promulgate rules pursuant to chapter 536, RSMo, in order to carry out the provisions of sections 302.700 to 302.715.

452.345. 1. As used in this section, the term "IV-D case" shall mean a case in which support rights have been assigned to the state of Missouri pursuant to section 208.040, RSMo, or where the Missouri division of child support enforcement is providing support enforcement services pursuant to section 454.425, RSMo.

2. At any time the court, upon its own motion, may, or upon the motion of either party shall, order that maintenance or support payments be made to the circuit clerk as trustee for remittance to the person entitled to receive the payments.

3. The circuit clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order. The circuit clerk shall charge ten dollars per year as costs for maintaining records, which fee shall be deducted from the first payment made each calendar year, that no fee shall be charged for maintaining records for any IV-D case. This fee

shall be paid to county or city general revenue.

4. The parties affected by the order shall inform the circuit clerk of any change of address or of other conditions that may affect the administration of the order.

5. [For any case except an IV-D case, if a party becomes delinquent in maintenance or support payments in an amount equal to one month's total support obligation, provisions of this subsection shall apply.] If the circuit clerk has been appointed trustee under subsection 2 of this section, or if the person, entitled to receive the payments files with the clerk an affidavit stating the particulars of the obligor's noncompliance, the circuit clerk shall send by regular mail notice of the delinquency to the obligor. This notice shall advise the obligor of the delinquency, shall state the amount of the obligation, and shall advise that the obligor's income is subject to withholding for repayment of the delinquency and for payment of current support, as provided in section 452.350. For such cases, the circuit clerk shall, in addition to the notice to the obligor, send by regular mail a notice to the obligee. This notice shall state the amount of the delinquency and shall advise the obligee that income withholding, pursuant to section 452.350, is available for collection of support delinquencies and current support, and if the support order includes amounts for child support, that support enforcement services, pursuant to section 454.425, RSMo, are available through the Missouri division of child support enforcement of the department of social services.

6. Maintenance or support payments made to the circuit clerk pursuant to this section may be made by personal check. If an obligor issues a check to the circuit clerk which is not honored by the drawee, the obligor shall, in addition to all other punishment allowed by law, be fined fifty dollars and shall be

required to make all subsequent maintenance or support payments to the circuit clerk by certified check or money order.

452.350. 1. Each order for child support or maintenance entered or modified by the court under the authority of this chapter, or otherwise, before the effective date of this act shall include a provision notifying the person obligated to pay such support or maintenance that, upon application by the obligee or the Missouri division of child support enforcement of the department of social services, the obligor's wages or other income shall be subject to withholding without further notice if the obligor becomes delinquent in maintenance or child support payments in an amount equal to one month's total support obligation. Each order for child support or maintenance entered or modified by the court under the authority of this chapter, or otherwise, on or after the effective date of this act, shall include a provision notifying the person obligated to pay such support or maintenance that the obligor's wages or other income shall be subject to withholding without further notice. The order shall also contain provisions notifying the obligor that:

(1) The withholding shall be for the current month's maintenance and support; and

(2) If there is a delinquency the withholding shall include an additional amount equal to fifty percent of one month's child support and maintenance to defray delinquent child support and maintenance, which additional withholding shall continue until the delinquency is paid in full.

2. The provisions of section 432.030, RSMo, to the contrary notwithstanding, the obligated party may execute a voluntary income assignment at any time, which assignment shall be filed with the court and shall take effect after service on the employer or other payor.

3. The circuit clerk, upon application of the obligee or the division of child support enforcement, shall send, by certified mail, return receipt requested, a written notice to the employer or other payor listed on the application. The notice shall direct the employer or other payor to withhold each month an amount equal to one month's child support and maintenance until further notice from the court, and if so directed to withhold each month an additional amount equal to fifty percent of one month's child support and maintenance until the support delinquency is paid in full. The notice shall also include a statement of exemptions which may apply to limit the portion of the obligated party's disposable earnings which are subject to the withholding under federal or state law. The circuit clerk shall send a copy of this notice by regular mail to the last known address of the obligated party. A notice issued under this section shall be binding on the employer or other payor, and successor employers and payors, two weeks after mailing, and shall continue until further order of the court. The obligated party may, within that two-week period, request a hearing on the issue of whether the withholding should take effect. The withholding shall not be held in abeyance pending the outcome of the hearing. The obligor may not obtain relief from the withholding by paying the overdue support. The only basis for contesting the withholding is a mistake of fact. For the purpose of this section, "mistake of fact" shall mean an error in the amount of arrearages or an error as to the identity of the obligor. The court shall hold its hearing, enter its order disposing of all issues disputed by the obligated party, and notify the obligated party and the employer or other payor, within forty-five days of the date on which the withholding notice was sent to the employer.

4. For each payment the employer may charge a fee not to exceed three dollars, which shall be deducted from the obligor's moneys, income or periodic earnings, in addition to the amount deducted to meet the support or maintenance obligation subject to the limitations contained in the federal Consumer Credit Protection Act (15 USC 1673).

5. Upon termination of the obligor's employment with an employer upon whom a withholding notice has been served, the employer shall so notify the court in writing. The employer shall also inform the court, in writing, as to the last known address of the obligor and the name and address of the obligor's new employer, if known.

6. Amounts withheld by the employer or other payor shall be transmitted, in accordance with the notice, within ten days of the date that such amounts were payable to the obligated party. If the employer or other payor is withholding amounts for more than one order, the employer or other payor may combine all such withholding that are payable to the same circuit clerk and transmit them as one payment, together with a separate list identifying the cases to which they apply. An employer or other payor who fails to honor a withholding notice under this section may be held in contempt of court and is liable to the obligee for the amount that should have been withheld. Compliance by an employer or other payor with the withholding notice operates as a discharge of liability to the obligor as to that portion of his periodic earnings or other income so affected.

7. As used in this section, the term "employer" includes the state and its political subdivisions.

8. An employer shall not discharge or otherwise discipline, or refuse to hire, an employee as a result of a withholding notice issued pursuant to this section. Any obligor who is

aggrieved as a result of a violation of this subsection may bring a civil contempt proceeding against the employer by filing an appropriate motion in the cause of action from which the withholding notice issued. If the court finds that the employer discharged, disciplined, or refused to hire the obligor as a result of the withholding notice, the court may order the employer to reinstate or hire the obligor, or rescind any wrongful disciplinary action. If, after the entry of such an order, the employer refuses without good cause to comply with the court's order, or if the employer fails to comply with the withholding notice, the court may, after notice to the employer and a hearing, impose a fine against the employer, not to exceed five hundred dollars. Proceeds of any such fine shall be distributed by the court to the county general revenue fund.

9. A withholding entered under this section may, upon motion of a party and for good cause shown, be amended by the court. The clerk shall notify the employer of the amendment in the manner provided for in subsection 3 of this section.

10. The court, upon the motion of obligor and for good cause shown, may terminate the withholding, except that the withholding shall not be terminated for the sole reason that the obligor has fully paid past due child support and maintenance.

11. A withholding effected under this section shall have priority over any other legal process under state law against the same wages, except that where the other legal process is an order issued pursuant to this section or section 454.505, RSMo, the processes shall run concurrently, up to applicable wage withholding limitations. If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations, the current child

support obligation of the first served process shall be satisfied first, and then current child support obligations of subsequently served processes shall be satisfied in the order of service. Thereafter, delinquencies shall be satisfied in the order of service of the processes, up to the applicable limitation.

12. The remedy provided herein applies to child support and maintenance orders entered prior to August 13, 1986, notwithstanding the absence of the notice to the obligor provided for in subsection 1 of this section, provided that prior notice from the circuit clerk to the obligor in the manner prescribed in subsection 5 of section 452.345 is given.

452.355. 1. The court from time to time after considering all relevant factors including the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under sections 452.300 to 452.415 and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

2. In any proceeding in which the nonpayment of child support is an issue under the provisions of a temporary or permanent court order or decree, if the court finds that the obligor has failed, without good cause, to comply with such order or decree to pay the child support, the court shall order the obligor to pay a reasonable amount for the cost of the suit to the obligee, including sums for legal services. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

3. For purposes of this section, an "obligor" is a person owing a duty of support and an "obligee" is a person to whom a



duty of support is owed.

4. For purposes of this section, "good cause" includes any substantial reason why the defendant is unable to pay the child support as ordered. Good cause does not exist if the defendant purposely maintains his inability to pay.

452.370. 1. Except as otherwise provided in subsection 6 of section 452.325, the provisions of any decree respecting maintenance or support may be modified only upon a showing of changed circumstances [so substantial and continuing as to make the terms unreasonable] and that the modification is necessary to serve the best interests of the child. In a proceeding for modification of any child support award, the court, in determining whether or not a [substantial] change in circumstances has occurred, shall consider all financial resources of both parties, including the extent to which the reasonable expenses of either party are, or should be, shared by a spouse or other person with whom he or she cohabits, and the earning capacity of a party who is not employed.

2. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future statutory maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

3. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child. The custodial parent shall have the duty to notify the noncustodial parent of the child's emancipation and failing to do so the custodial parent shall be liable to the noncustodial parent for child support paid to the custodial parent following emancipation of a minor child.

4. In any case wherein a parent has made an assignment of support rights to the division of family services on behalf of

the state as a condition of eligibility for benefits under the aid to families with dependent children program and either party initiates a motion to modify the support obligation by reducing it, the state of Missouri shall be named as a party to the motion. The state shall be served with a copy of the motion by sending it by certified mail to the director of the division of child support enforcement.

5. The circuit court shall have continuing personal jurisdiction over both the obligee and the obligor of a court order for child support or maintenance for the purpose of modifying such order. Both obligee and obligor shall notify, in writing, the circuit clerk of the court in which the support or maintenance order was entered of any change of mailing address. If a personal service of the motion cannot be had in this state, the circuit clerk shall send a copy of the motion by certified mail, restricted delivery, to the last address shown for that party in the circuit clerk's record, and service shall be considered complete upon mailing. The order may be modified only as to support or maintenance installments which accrued subsequent to the date of personal service, or in the case of service by mail, from the date the circuit clerk sent a copy of the motion, by certified mail, to the party to be served. For the purpose of 42 USC 666(a)(9)(C), the circuit clerk shall be considered the "appropriate agent" to receive notice of the motion to modify for the obligee or the obligor, but only in those instances in which personal service could not be had in this state.

454.425. The division of child support enforcement shall render support enforcement services to persons who are not recipients of public assistance as well as to such recipients. [An application may be required by the division for services,

and] Fees may be charged by the division pursuant to 42 USC 654 and federal regulations.

454.435. 1. Each prosecuting attorney may enter into a cooperative agreement or may enter into a multiple county agreement to litigate or prosecute any action necessary to secure support for any person referred to such office by the division of child support enforcement including, but not limited to, reciprocal actions under this chapter, actions to establish and enforce obligations owed to the state under an assignment of support rights, actions to enforce medical support obligations ordered in conjunction with a child support obligation, actions to obtain reimbursement for the cost of medical care provided by the state for which an obligor is liable under subsection 9 of section 208.215, RSMo, and actions to establish the paternity of a child for whom support is sought. In all cases where a prosecuting attorney has entered into a cooperative agreement to seek the establishment of a support obligation, the prosecuting attorney shall, in addition to periodic monetary support, seek [an order] and enforce orders from the court directing the obligated parent to maintain medical insurance on behalf of the child for whom support is sought, which insurance shall, in the opinion of the court, be sufficient to provide adequate medical coverage; or to otherwise provide for such child's necessary medical expenses.

2. In all cases where a prosecuting attorney has entered into a cooperative agreement to litigate or prosecute an action necessary to secure child support, and an information is not filed or civil action commenced within sixty days of the receipt of the referral from the division, the division may demand return of the referral and the case filed and the prosecuting attorney shall return the referral and the case file. The division may

then use any other attorney which it employs or with whom it has a cooperative agreement to establish or enforce the support obligation.

3. As used in this section, the term "prosecuting attorney" means, with reference to any city not within a county, the circuit attorney.

454.450. 1. Whenever a custodian of a child, or other person, receives support moneys paid to him or her, which moneys are paid in whole or in part in satisfaction of a support obligation which is owed to the division of family services pursuant to subsection 2 of section 454.465, or which has been assigned to the division of family services pursuant to subsection 2 of section 208.040, RSMo, the moneys shall be remitted to the department of social services within ten days of receipt by such custodian or other person. If not so remitted, such custodian or other person shall be indebted to the department in an amount equal to the amount of the support money received and not remitted. By not paying over the moneys to the department, such custodian or other person is deemed, without the necessity of signing any document, to have made an irrevocable assignment to the division of family services of any support delinquency owed which is not already assigned to the division of family services or to any support delinquency which may accrue in the future in an amount equal to the amount of the support money retained. The department may utilize any available administrative or legal process to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of such custodian or other person to remit. The department is also authorized to make a set off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the

court or other forwarding agent which would otherwise be payable to such custodian or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make a set off as to current support paid during the month for which the payment is due and owing.

2. A custodian of a child, or other person, who has made an assignment of support rights to the division of family services, shall not make any agreement with any private attorney or other person regarding the collection of assigned support obligations without approval of the department of social services. If any private attorney or other person who in good faith and without knowledge of such assignment collects all or part of the assigned support obligations, any agreement regarding the distribution of the proceeds of the assigned support obligations by such private attorney or other person shall not bind the department; provided, however, the department shall be liable to such private attorney or other person for a fee computed in accordance with subsection 3 of this section. When a private attorney or other person has begun to collect a support obligation, and thereafter [an] a notice of assignment of support rights to the division is filed with the court pursuant to section 454.415, notice of such assignment shall be given to that attorney or other person as provided by supreme court rule 43.01.

3. (1) Where an assignment of support rights has been made to the division of family services but notice of such assignment was not filed with the court pursuant to section 454.415, a private attorney who in good faith and without knowledge of such assignment collects all or part of such assigned support obligation shall be awarded by the department a fee of twenty-five percent of the support obligation collected. Such fees shall be paid out of state funds in lieu of federal funds.

(2) Where an assignment of support rights has been made to the division of family services and notice of the assignment was not filed with the court pursuant to section 454.415 until after the private attorney has begun collection proceedings, a private attorney who collects assigned support obligations shall be awarded a fee, as the court shall determine, based upon the time expended, but in no event shall the fee exceed twenty-five percent of the support obligation collected.

(3) Where no assignment of support rights has been made to the division of family services until after the private attorney has collected any part of the support obligation, no recoupment shall be had by the department of the portion collected, and the fee awarded to the private attorney or other person shall be the fee negotiated between the client and the private attorney or other person.

4. A person commits the crime of stealing, as defined by section 570.030, RSMo, if he takes, obtains, uses, transfers, conceals, or retains possession of child support payments which have been assigned to the division of family services with the purpose to deprive the division thereof, either without the consent of the division or by means of deceit or coercion.

454.460. As used in sections 454.460 to 454.520, unless the context clearly indicates otherwise, the following terms mean:

(1) "Court", any circuit court of this state and any court or agency of any other state having jurisdiction to determine the liability of persons for the support of another person;

(2) "Court order", any judgment, decree, or order of any court which orders payment of a set or determinable amount of support money;

(3) "Department", the department of social services of the state of Missouri;

(4) "Dependent child", any person under the age of twenty-one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(5) "Director", the director of the division of child support enforcement, or his designee;

(6) "Division", the division of child support enforcement of the department of social services of the state of Missouri;

(7) "Obligee", any person to whom payments are required to be made under the terms of a court order for a child, spouse or former spouse;

(8) "Obligor", any person required to make payments under the terms of a court order for a child, spouse or former spouse;

(9) "Parent", the natural or adoptive father or mother of a dependent child;

(10) "Public assistance", any cash or title XIX benefits paid by the [division] department to or for the benefit of any dependent child;

(11) "State", any state or political subdivision, territory or possession of the United States, District of Columbia, and the Commonwealth of Puerto Rico.

454.476. 1. If a court order has previously been entered, the director may enter an administrative order in accordance with the court order, upon receiving from the obligee, a child support enforcement agency of another state, or the court:

(1) A certified copy of the court order together with all modifications thereto;

(2) A sworn statement by the obligee or a certified statement from the court attesting to or certifying the amount of any arrearages under the court order;

(3) A statement of the name, last known address and, if known, the social security number of the obligor; and

(4) The name and address of the obligor's employer or other payor, if known.

2. The obligor shall be sent a copy of the administrative order by certified mail, return receipt requested, addressed to the obligor's last known address or, if applicable, the obligor's attorney's last known address. The obligee shall be sent a copy of the administrative order by regular mail.

3. Upon entry of the order, the director shall issue an order directing an employer or other payor to withhold and pay over money due or to become due to the obligated parent as set out in section 454.505.

4. The obligor, within fourteen days after receiving notice of the director's order, may request an administrative hearing as provided in section 454.475 to contest the order or withholding thereunder. At such hearing, the certified copy of the court order and the sworn or certified statement of arrearages shall constitute prima facie evidence that the director's order is valid and enforceable. Once the prima facie case is established, the obligor may assert only mistake of fact as a defense. Mistake of fact shall mean an error in the amount of arrearages or an error as to the identity of the obligor. The obligor shall have the burden of proof as to these issues. The obligor may not obtain relief from the withholding by paying the overdue support.

5. If the obligor requests a hearing, the withholding will be implemented unless the obligor posts a bond or other security satisfactory to the director to insure payment of support.

6. Every order which contains a provision for the support of a child, whether entered by a court or an administrative body of this or any other state, and whether entered prior to or subsequent to enactment of this section, shall be enforceable by an order to withhold as provided for by section 454.505



immediately upon compliance with subsection i of this section.

454.505. 1. In addition to any other remedy provided by law for the enforcement of support, if an order has been entered by the director prior to the effective date of this act pursuant to sections 454.460 to 454.505 and an arrearage exists on the payments required, the director shall issue an order directing any employer or other payor of the parent to withhold and pay over to the department or the clerk of the circuit court in the county in which the order of the director was docketed pursuant to section 454.490, money due or to become due the obligated parent in an amount not to exceed federal wage garnishment limitations, until all arrearages under such administrative order are paid in full. Thereafter, the amount ordered to be paid for support shall be withheld from amounts due or becoming due the parent at each pay period. If the parent voluntarily requests that money due or to become due him be withheld and applied to the support obligation, the employer or other payor shall comply with that request as if so ordered by the director. If an order has been entered by the director on or after the effective date of this act pursuant to sections 454.460 to 454.505, the director shall issue an order directing any employer or other payor of the parent to withhold and pay over to the department or the clerk of the circuit court in the county in which the order of the director was docketed pursuant to section 454.490, the amount ordered to be paid for support.

2. An order entered pursuant to this section shall recite the amount of all arrearages due, if any, and the amount required to be paid as continuing support. A copy of sections 454.460 and 454.505 shall be appended to the order. A copy of such order shall be filed with the circuit court in the county in which the administrative support order was filed pursuant to section

454.490.

3. An order entered pursuant to this section shall be served on the employer or other payor by certified mail, return receipt requested, and shall be binding on the employer or other payor two weeks after mailing of such service. A copy of the order and a notice of property exempt from withholding shall be mailed to the obligor at his last known address. The employer or other payor shall withhold from the earnings or other income the amount specified in the order, and may deduct an additional sum not to exceed three dollars as reimbursement for costs, except that the total amount withheld shall not exceed the limitations contained in the federal Consumer Credit Protection Act, 15 USC 1673(b). The employer or other payor shall transmit the payments as directed in the order within ten days of the date the earnings or other income were payable to the obligor.

4. If the order is served on a payor other than an employer, it shall be a lien against any money due or to become due the obligated parent which is in the possession of the payor on the date of service or which may come into the possession of the payor after service until further order of the director, except for any deposits held in two or more names in a financial institution.

5. The department shall notify an employer or other payor upon whom such an order has been directed whenever all arrearages have been paid in full, and whenever, for any other reason, the amount required to be withheld and paid over to the department under the order as to future pay periods is to be reduced or redirected. If the parent's support obligation is required to be paid monthly and the parent's pay periods are at more frequent intervals, the employer or other payor may, at the request of the parent and with the consent of the director, withhold and pay

over to the department, an equal amount at each pay period cumulatively sufficient to comply with the withholding order.

6. An order issued under subsection 1 of this section shall be a continuing order and shall remain in effect and be binding upon any employer or other payor upon whom it is directed until a further order of the director. Such orders shall terminate when all children for whom the support order applies are emancipated or deceased, or the support obligation otherwise ends, and all arrearages are paid. No order to withhold shall be terminated solely because the obligor has fully paid arrearages.

7. An order issued under subsection 1 of this section shall have priority over any other legal process under state law against the same wages, except that where the other legal process is an order issued pursuant to this section or section 452.350, RSMo, the processes shall run concurrently, up to applicable wage withholding limitations. If concurrently running wage withholding processes for the collection of support obligations would cause the amounts withheld from the wages of the obligor to exceed applicable wage withholding limitations, the current support obligation of the first served process shall be satisfied first, and then current support obligations of subsequently served process or processes shall be satisfied in the order of service. Thereafter, arrearages shall be satisfied in the order of service of the processes, up to the applicable limitation.

8. No employer or other payor who complies with an order entered pursuant to this section shall be liable to the parent, or to any other person claiming rights derived from the parent, for wrongful withholding. An employer or other payor who fails or refuses to withhold or pay the amounts as ordered under this section shall be liable to the party holding the support rights in an amount equal to the amount which became due the parent

during the relevant period and which, under the order, should have been withheld and paid over.

9. The remedy provided by this section shall be available where the state or any of its political subdivisions is the employer or other payor of the obligated parent in the same manner and to the same extent as where the employer or other payor is a private party.

10. An employer shall not discharge, or refuse to hire or otherwise discipline an employee as a result of an order to withhold and pay over certain money authorized by this section. If any such employee is discharged within thirty days of the date upon which an order to withhold and pay over certain money is to take effect, there shall arise a rebuttable presumption that such discharge was a result of such order. This presumption shall be overcome only by clear, cogent and convincing evidence produced by the employer that the employee was not terminated because of the order to withhold and pay over certain money. The director is hereby authorized to bring an action in circuit court to determine whether the discharge constitutes a violation of this subsection. If the court finds that a violation has occurred, the court may enter an order against the employer requiring reinstatement of the employee. Further, the court may enter judgment against the employer for the back wages, costs, attorney's fees, and for the amount of child support which should have been withheld and paid over during the period of time the employee was wrongfully discharged.

11. If an obligor for whom an order to withhold has been issued under subsection 1 of this section terminates his employment, the employer shall, within ten days of the termination, notify the division of the termination, shall provide to the division the last known address of the obligor, if

known to the employer, and shall provide to the department the name and address of the obligor's new employer, if known. When the department determines the identity of the obligor's new employer, the director shall issue an order to the new employer as provided in subsection 1 of this section.

12. If an employer or other payor is withholding amounts for more than one order issued under subsection 1 of this section, the employer or other payor may transmit all such withholdings which are to be remitted to the same circuit clerk as one payment together with a separate list identifying obligors for whom a withholding has been made and the amount withheld from each obligor so listed.

454.506. 1. Unless the obligee has comparable or better group dependent health insurance coverage available at a more reasonable cost, the court shall order the obligor to name the minor child as beneficiary on any health and dental insurance plan that is available to the obligor on a group basis or through an employer or union. If the court finds that dependent health or dental insurance is not available to the obligor on a group basis or through an employer or union, or that the group insurer is not accessible to the obligee, the court may require the obligor to obtain dependent health or dental insurance, or to be liable for reasonable and necessary medical or dental expenses of the child. If the court finds that the dependent health or dental insurance required to be obtained by the obligor does not pay all the reasonable and necessary medical or dental expenses of the child, or that the dependent health or dental insurance available to the obligee does not pay all the reasonable and necessary medical or dental expenses of the child, and the court finds that the obligor has the financial ability to contribute to the payment of these medical or dental expenses, the court shall

require the obligor to be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan.

2. The court shall require the obligor to provide dependenter health and dental insurance for the benefit of the obligee if is available at no additional cost to the obligor and in this case the provisions of this section apply.

3. A copy of the court order for insurance coverage shall forwarded to the obligor's employer or union by the obligee or the division of child support enforcement only when ordered by the court or when the following conditions are met:

(1) The obligor fails to provide written proof to the obligee or the division within thirty days of receiving effective notice of the court order, that the insurance has been obtained or that application for insurability has been made;

(2) The obligee or the division serves written notice of its intent to enforce medical support on the obligor by mail at the obligor's last known post office address; and

(3) The obligor fails within fifteen days after the mailing of the notice to provide written proof to the obligee or the division that the insurance coverage existed as of the date of mailing.

4. The order is binding on the employer or union when service under subsection 3 of this section has been made. Upon receipt of the order, or upon application of the obligor pursuant to the order, the employer or union shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income or wages. If more than one plan is offered by the employer or union, the child shall be enrolled in the insurance plan in which the obligor is enrolled or the least costly plan otherwise available to the

obligor that is comparable to a number two qualified plan. The insurance coverage for a child eligible under subsection 5 of this section shall not be terminated except as authorized in subsection 5 of this section.

5. A minor child that an obligor is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the obligor until the child is emancipated or until further order of the court.

6. The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services. When an order for dependent insurance coverage is in effect and the obligor's employment is terminated, or the insurance coverage is terminated, the insurer shall notify the obligee within ten days of the termination date with notice of conversion privileges.

7. When an order for dependent insurance coverage is in effect, the obligor's employer or union shall release to the obligee or the division, upon request, information on the dependent coverage, including the name of the insurer.

8. The obligor that fails to maintain the medical or dental insurance for the benefit of the children as ordered shall be liable to the obligee for any medical or dental expenses incurred from the date of the court order. Proof of failure to maintain insurance shall be grounds for a modification of the obligor's child support order.

9. The division of child support enforcement shall take necessary steps to implement and enforce an order for dependent health or dental insurance whenever the children receive public assistance, or upon application of the obligee to the division.

568.040. 1. [A husband commits the crime of nonsupport if

he knowingly fails to provide, without good cause, adequate support for his wife;] A parent commits the crime of nonsupport if such parent knowingly fails to provide, without good cause, adequate support which such parent is legally obligated to provide for his minor child or his stepchild.

2. For purposes of this section:

(1) "Support" means food, clothing, lodging, and medical or surgical attention;

(2) "Child" means any [natural] biological or adoptive[, ] child, whether legitimate or [illegitimate child] born out of wedlock;

(3) "Good cause" includes any substantial reason why the defendant is unable to provide adequate support. Good cause does not exist if the defendant purposely maintains his inability to support;

(4) It shall not constitute a failure to provide medical and surgical attention, if nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

3. The defendant shall have the burden of injecting the issues raised by subdivisions (3) and (4) of subsection 2. Inability to pay shall be a defense only in cases where the defendant has made a good faith effort to pay that portion of the child support obligation which is within the limits of his ability to pay.

4. Criminal nonsupport is a [class A misdemeanor, unless the actor leaves the state for the purpose of avoiding his obligation to support, in which case it is a] class D felony and is punishable by a fine not to exceed five thousand dollars or a term of imprisonment not to exceed five years or by both a fine and term of imprisonment.

Section 1. 1. Noncustodial parents required to pay court



ordered or state determined child support which is awarded or modified after the effective date of this act shall have the sums owed automatically withheld from their pay by their employers. As under current law, employers shall be informed by the circuit clerk how much is owed and shall forward the sums withheld to the circuit clerk for distribution to families.

2. Child support cases with existing court orders will not be subject to automatic wage withholding unless a parent requests that the order be reviewed and modified.

3. The requirement to immediately withhold child support from wages may be waived when both parents agree to an alternative arrangement or when states find good cause to rely on an alternative arrangement.

Section 2. 1. The department of health shall establish a putative father registry which shall record the names and addresses of:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock;

(2) Any person who has filed with the registry before or after the birth of a child out of wedlock, a notice of intent to claim paternity of the child;

(3) Any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person.

2. A person filing a notice of intent to claim paternity of a child or an acknowledgement of paternity shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the department.

3. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

4. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

5. The department shall, upon request, provide the names and addresses of persons listed with the registry to any court or authorized agency, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.



AN ACT

To repeal sections 43.400, 210.160, 452.400, 452.402, and 565.150, RSMo 1986, relating to children and minors, and to enact in lieu thereof twenty-two new sections relating to the same subject.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 43.400, 210.160, 452.400, 452.402, and 565.150, RSMo 1986, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 43.400, 43.401, 43.402, 43.404, 43.405, 43.406, 43.407, 43.408, 43.409, 210.160, 452.400, 452.402, 452.423, 565.150, 1, 2, 3, 4, 5, 6, 7 and 8, to read as follows:

43.400. [1.] As used in [this section, unless the context otherwise indicates,] sections 43.400 to 43.410 the following terms [shall] mean:

(1) "Missing child" or "missing juvenile", any person who is under the age of seventeen years, whose temporary or permanent residence is in the state of Missouri or who is believed to be within the state of Missouri, whose location has not been determined, and who has been reported as missing to a law enforcement agency;

(2) "Missing child report", a report prepared on a standard form supplied by the Missouri state highway patrol for the use by private citizens and law enforcement agencies to report missing children or missing juvenile information to the Missouri state highway patrol;

(3) "Missing person", a person who is missing and meets one of the following characteristics:

(a) Is physically or mentally disabled to the degree that the person is dependent upon an agency or another individual;

(b) Was or is in the company of another person under

**EXPLANATION** -- Matter enclosed in ~~bracketed~~ bracketed ~~(there)~~ in this bill is not enacted and is intended to be omitted in the law.

circumstances indicating that the missing person's safety may be in danger;

(c) Is missing under circumstances indicating that the disappearance was not voluntary;

(d) Is a child or juvenile runaway from the residence of a parent or legal guardian;

(4) "Patrol", the Missouri state highway patrol[.];

(5) "Registrar", the state registrar of vital statistics.

[2.] 43.401. 1. The reporting of missing persons by law enforcement agencies, private citizens, and the responsibilities of the patrol in maintaining accurate records of missing persons are as follows:

(1) A person may file a complaint of a missing person with a law enforcement agency having jurisdiction. The complaint shall include, but need not be limited to, the following information:

(a) The name of the complainant;

(b) The relationship of the complainant to the missing person;

(c) The name, age, address, and all identifying characteristics of the missing person;

(d) The length of time the person has been missing;

(e) All other information deemed relevant by either the complainant or the law enforcement agency;

(2) A report of the complaint of a missing person shall be immediately entered into the Missouri uniform law enforcement system (MULES) and the National Crime Information Center (NCIC) system by the law enforcement agency receiving the complaint, and disseminate to other law enforcement agencies who may come in contact with or be involved in the investigation or location of a missing person;

(3) A law enforcement agency with which a complaint of a missing child or a missing juvenile has been filed shall prepare, as soon as practicable, a standard missing child report and forward a copy of such report to the patrol;

(4) Upon the location of a missing person, or the determination by the law enforcement agency of jurisdiction that the person is no longer missing, the law enforcement agency which reported the missing person shall immediately remove the record of the missing person from the MULES and NCIC files. If the missing person was a child, the law enforcement agency which made the initial report, shall notify the missing person unit of the patrol of the circumstances which caused the investigation of the case to be closed.

[3.] 2. No law enforcement agency shall prevent an immediate active investigation on the basis of an agency rule which specifies an automatic time limitation for a missing person investigation.

[4.] 43.402. The superintendent of the patrol shall organize a missing persons unit within the patrol, which unit shall be the central repository for this state for information regarding missing persons. The head of this missing person unit shall, with the approval of the superintendent of the patrol, establish the services deemed necessary to aid in the location of missing persons including, but not limited to, the following:

[(a)] (1) Collecting and disseminating information regarding missing persons in order to assist in locating such persons;

[(b)] (2) Establishing a system of interstate and intrastate communication of information relating to children determined to be missing by the parent, guardian, or legal custodian of the child, or by a law enforcement agency;

[(c)] (3) Providing a centralized file for the exchange of information on missing children with appropriate private or federal agencies which serve as national coordinators of missing children incidents.

[5.] 43.403. The director of the department of social services, the director of the department of mental health, school districts, and juvenile courts, shall establish appropriate procedures to insure that all possible instances of missing children are reported to the appropriate law enforcement agency or the highway patrol as required by [this section] sections 43.400 to 43.409.

[6.] 43.404. Any parent, guardian, or legal custodian may submit a missing child report to the patrol on any child whose whereabouts are unknown, regardless of the circumstances, subsequent to the reporting of such to the appropriate law enforcement agency within the county in which the child became missing. Each of the reports so made by any parent, guardian, or legal custodian shall be included in the records of the patrol concerning the missing child in question. The parent, guardian, or legal custodian responsible for notifying the patrol or a law enforcement agency of a missing child shall immediately notify such agency or the patrol when the location of the child reported missing has been determined.

[7.] 43.405. A person who knowingly makes a false report of a missing person, or knowingly makes a false statement in any such report, to a law enforcement agency is guilty of a class A misdemeanor.

43.406. 1. Upon receipt of a report of a missing child, the patrol shall notify the state registrar of vital statistics of the disappearance and shall provide the registrar with information concerning the identity of the missing child.

2. If the patrol has reason to believe that a missing child has been enrolled in a specific Missouri elementary or secondary school, the patrol shall notify the last such known school of the disappearance.

3. The patrol shall by rule determine the manner and form of notices and information required by sections 43.406 to 43.409.

43.407. 1. Upon notification by the patrol that a child born in this state is missing, the registrar shall flag the birth certificate record of that child in such a manner that whenever a copy of the birth certificate or information regarding the birth record is requested, the registrar shall be alerted to the fact that the certificate is that of a missing child.

2. In response to any inquiry, the registrar may provide a copy of a birth certificate or information concerning the birth record of any child whose record is flagged pursuant to this section, but shall proceed as follows:

(1) When a copy of the birth certificate of a child whose record has been flagged is requested in person, the registrar's personnel accepting the request shall immediately notify his supervisor. The person making the request shall complete a form supplying his name, address, telephone number, social security number and relationship to the missing child and the name, address and birth date of the missing child. The driver's license of the person making the request, if available, shall be photocopied and returned to him. The registrar's personnel shall note the physical description of the person making the request, and, upon the latter's departure from the registrar's office, the supervisor shall immediately notify the local law enforcement authorities as to the request and the information



obtained pursuant to this subsection. The registrar shall retain the form completed by the person making the request.

(2) When a copy of the birth certificate of a child whose record has been flagged is requested in writing, the registrar's personnel receiving the request shall immediately notify his supervisor. The supervisor shall immediately notify local law enforcement authorities as to the request and shall provide a copy of the written request. The registrar shall retain the original written request.

43.408. 1. Upon notification by the patrol of a child's disappearance, a school in which the child is currently or was previously enrolled shall flag the record of that child in such a manner that whenever a copy of or information regarding the record is requested, the school shall be alerted to the fact that the record is that of a missing child. The school shall immediately report to local law enforcement authorities any request concerning flagged records or knowledge as to the whereabouts of any missing child.

2. Within fourteen days after enrolling a transfer student, the elementary or secondary school personnel shall request directly from the student's previous school a certified copy of his record. The requesting school shall exercise due diligence in obtaining the copy of the record requested. Any elementary or secondary school requested to forward a copy of a transferring student's record to the new school shall comply unless the record has been flagged pursuant to subsection 1 of this section, in which case the copy shall not be forwarded and the requested school shall notify the local law enforcement authority of the request.

43.409. 1. Any local law enforcement authority notified pursuant to sections 43.406 to 43.409 of the request for the

birth certificate or school record of or other information concerning a missing child shall immediately notify the patrol of such request and shall investigate the request.

2. Upon learning of the recovery of a missing child, the patrol shall notify the registrar and any school previously informed of the child's disappearance. Thereupon, both the registrar and the school shall remove the flag from the child's records.

210.160. 1. In every case involving an abused or neglected child which results in a judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent:

(1) A child who is the subject of proceedings under sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, RSMo, or sections 453.005 to 453.170, RSMo, or proceedings to determine custody or visitation rights under sections 452.375 to 452.410, RSMo; or

(2) A parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings under sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, RSMo, or sections 453.005 to 453.170, RSMo.

2. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person and shall have access to all records of such agencies or persons relating to the child or his family members or placements of the child. Employees of the division, officers of the court, and employees of any agency involved shall fully inform the guardian ad litem of all aspects of the case of which they have knowledge or belief.

3. The appointing judge shall require the guardian ad litem

to faithfully discharge his duties, and upon failure to do so shall discharge him and appoint another. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the earlier proceeding, unless there is a reason on the record for not giving such preference.

4. The guardian ad litem may be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings, or may tax said fees as costs to be paid by the party against whom costs are taxed, or from public funds. However, no fees as a judgment shall be taxed against a party or parties who have not been found to have abused or neglected a child or children. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

5. The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person and shall have access to all records of such agencies or persons relating to the child or his family members or placements of the child. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

6. Any person appointed to perform guardian ad litem duties shall have completed a training program in permanency planning. A nonattorney volunteer advocate shall have access to a court appointed attorney guardian ad litem should the circumstances of

the particular case so require.

452.400. 1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his emotional development.

2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his emotional development. When a court restricts a parent's visitation rights or when a court orders supervised visitation because of allegations of abuse, a showing of proof of treatment or rehabilitation shall be made to the court before unsupervised visitation may be ordered. "Supervised visitation", as used in this section, is visitation which takes place in the presence of a responsible adult appointed by the court for the protection of the child.

3. [The court may grant reasonable visitation rights to either the maternal or paternal grandparents of the child and issue any necessary orders to enforce the decree. A maternal or paternal grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights; the grandparents shall also have the right to file a motion to modify the original decree to seek visitation rights when visitation rights have been denied to them. The court shall determine if the visitation by the grandparent would be in the child's best interest or if it would endanger the child's physical health or impair his emotional development.] The court shall mandate compliance with its order by both the custodial parent and the child. In the event of noncompliance, the

noncustodial parent may file a motion for contempt. Upon a finding by the court that its order for visitation has not been complied with, without good cause, the court shall exercise its discretion in providing a remedy, and define the noncustodial parent's visitation in detail. However, if a second finding of noncompliance by the court is made the court shall consider this to be grounds for a change of custody to the noncustodial parent.

4. The attorneys' fees and costs of a proceeding to enforce visitation rights shall be assessed against the parent who unreasonably denies or interferes with visitation. In addition, the court may utilize any and all powers relating to contempt conferred on it by law or rule of the Missouri supreme court.

452.402. 1. [Whenever one parent of a child is deceased and the surviving parent denies reasonable visitation rights to a maternal or paternal grandparent of the child, or whenever one parent of a child is deceased and the child has been subsequently adopted and reasonable visitation rights have been denied to a person who was a legal grandparent prior to the adoption of the child, the grandparent or the person who was the legal grandparent prior to the adoption of the child may petition the juvenile court of the county where the child resides to inquire into the refusal of the surviving and/or adoptive parent to allow reasonable visitation. The court shall take jurisdiction over the child and hold a hearing under the same procedure as a hearing under chapter 211, RSMo, to determine if the visitation by the grandparent or person who was a legal grandparent prior to the adoption would be in the child's best interests or if it would endanger the child's physical health or impair his emotional development. At the conclusion of the hearing, the juvenile court may grant or deny

reasonable visitation rights to the grandparent or person who was a legal grandparent prior to the adoption and issue any necessary orders to enforce the decree.] The court may grant reasonable visitation rights to the grandparents of the child and issue any necessary orders to enforce the decree. The court may grant grandparent visitation when:

(1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights. Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when such rights have been denied to them;

(2) One parent of the child is deceased and the surviving parent denies reasonable visitation rights; or

(3) A grandparent is unreasonably denied visitation with the child for a period exceeding six months.

2. The court shall determine if the visitation by the grandparent would be in the child's best interest or if it would endanger the child's physical health or impair his emotional development. Visitation may only be ordered when the court finds such visitation to be in the best interests of the child. The court may order reasonable conditions or restrictions on grandparent visitation.

3. If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if he were a party. The court shall allow a reasonable fee to the guardian ad litem to be

taxed as costs in the proceedings.

4. A home study, as described by section 452.390, may be ordered by the court to assist in determining the best interests of the child.

5. The court may, in its discretion, consult with the child regarding the child's wishes in determining the best interest of the child.

6. The right of a grandparent to seek or maintain visitation rights under this section shall terminate upon the adoption of the child except in those situations in which one parent is deceased and the child has been subsequently adopted by a stepparent.

7. The court may award reasonable attorneys fees and expenses to the prevailing party.

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal separation where custody or visitation of a child is a contested issue, the court shall appoint a guardian ad litem.

2. The guardian ad litem shall:

(1) Be the legal representative of the child at the hearing, and may examine, cross-examine, subpoena witnesses and offer testimony;

(2) Prior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and attitudes. If appropriate, the child should be interviewed.

3. The appointing judge shall require the guardian ad litem to faithfully discharge his duties, and upon failure to do so shall discharge him and appoint another. The judge in making appointments pursuant to this section shall give preference to persons who served as guardian ad litem for the child in the

earlier proceeding, unless there is a reason on the record for not giving such preference.

4. The guardian ad litem shall be awarded a reasonable fee for such services to be set by the court. The court, in its discretion, may award such fees as a judgment to be paid by any party to the proceedings, or may tax such fees as costs to be paid by the party against whom costs are taxed, or from public funds. Such an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final judgment shall be enforceable against the parties in accordance with chapter 513, RSMo.

5. The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court. The volunteer advocate shall be provided with all reports relevant to the case made to or by any agency or person and shall have access to all records of such agencies or persons relating to the child or his family members. Any such designated person shall receive no compensation from public funds. This shall not preclude reimbursement for reasonable expenses.

565.150. 1. A person commits the crime of interference with custody if, knowing that he has no legal right to do so, he takes or entices from [lawful] legal custody any person entrusted by order of a court to the custody of another person or institution.

2. Interference with custody is a class A misdemeanor unless the person taken or enticed away from legal custody is removed from this state, detained in another state or concealed, in which case it is a class D felony.

Section 1. As used in section 565.150, RSMo, and sections 1 to 8 of this act, the following words and phrases mean:



- (1) "Child", a person under seventeen years of age;
- (2) "Legal custody", the right to the care, custody and control of a child;
- (3) "Parent", either a biological parent or a parent by adoption;
- (4) "Person having a right of custody", a parent or legal guardian of the child.

Section 2. 1. In the absence of a court order determining rights of custody or visitation to a child, a person having a right of custody of the child commits the crime of parental kidnapping if he removes, takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child.

2. Parental kidnapping is a class D felony.

3. A subsequently obtained court order for custody or visitation shall not affect the application of this section.

Section 3. 1. A person commits the crime of child abduction if he or she:

(1) Intentionally takes, detains, entices, conceals or removes a child from a parent after being served with process in an action affecting marriage or paternity but prior to the issuance of a temporary or final order determining custody;

(2) At the expiration of visitation rights outside the state, intentionally fails or refuses to return or impedes the return of the child to the legal custodian in Missouri;

(3) Conceals, detains, or removes the child for payment or promise of payment at the instruction of a person who has no legal right to custody;

(4) Retains in this state for thirty days a child removed

from another state without the consent of the legal custodian or in violation of a valid court order of custody; or

(5) Having legal custody of the child pursuant to a valid court order, removes, takes, detains, conceals or entices away that child within or without the state, without good cause, and with the intent to deprive the custody or visitation rights of another person, without obtaining written consent as is provided under section 452.377, RSMo.

2. Child abduction is a class D felony.

Section 4. It shall be an absolute defense to the crimes of parental kidnapping and child abduction that:

(1) The person had custody of the child pursuant to a valid court order granting legal custody or visitation rights which existed at the time of the alleged violation, except that this defense is not available to persons charged with child abduction under subdivision (6) of subsection 1 of section 3 of this act;

(2) The person had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond his or her control, and the person notified or made a reasonable attempt to notify the other parent or legal custodian of the child of such circumstances within twenty-four hours after the visitation period had expired and returned the child as soon as possible; or

(3) The person was fleeing an incident or pattern of domestic violence.

Section 5. Persons accused of committing the crime of interference with custody, parental kidnapping or child abduction shall be prosecuted by the prosecuting attorney or circuit attorney:

(1) In the county in which the child was taken or enticed

away from legal custody;

(2) In any county in which the child who was taken or enticed away from legal custody was taken or held by the defendant;

(3) The county in which lawful custody of the child taken or enticed away was granted; or

(4) The county in which the defendant is found.

Section 6. 1. A person commits the crime of assisting in child abduction or parental kidnapping if he:

(1) Before or during the commission of a child abduction or parental kidnapping as defined in section 2 or 3 of this act and with the intent to promote or facilitate such offense, intentionally assists another in the planning or commission of child abduction or parental kidnapping, unless before the commission of the offense he makes proper efforts to prevent the commission of the offense; or

(2) With the intent to prevent the apprehension of a person known to have committed the offense of child abduction or parental kidnapping, or with the intent to obstruct or prevent efforts to locate the child victim of a child abduction, knowingly destroys, alters, conceals or disguises physical evidence or furnishes false information.

2. Assisting in child abduction or parental kidnapping is a class A misdemeanor.

Section 7. 1. A peace officer investigating a report of a violation of section 565.150, RSMo, or section 2 or 3 of this act, may take the child into temporary protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the child.

2. If during the course of an investigation under section 565.150, RSMo, or section 2 or 3 of this act, the child is found

in the physical custody of the defendant or another, the law enforcement officer shall return the child to the parent or legal custodian from whom the child was concealed, detained or removed, unless there is good cause for the law enforcement officer to retain temporary protective custody of the child pursuant to section 210.125, RSMo.

Section 8. Upon conviction or guilty plea of a person under section 565.150, RSMo, or section 2 or 3 of this act, the court may, in addition to or in lieu of any sentence or fine imposed, assess as restitution against the defendant and in favor of the legal custodian or parent any reasonable expenses incurred by the legal custodian or parent in searching for or returning the child.





